



AXA Foundation
for Occupational Benefits

Occupational benefits

Regulations on the partial and total liquidation of occupational benefits funds

AXA Foundation for Occupational Benefits, Winterthur

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Purpose, scope and definition of terms

No. 1

These regulations govern the conditions and procedures for partial and total liquidation of the occupational benefits funds that are affiliated with the collective foundation (hereinafter referred to as “Foundation”).

Separate regulations govern the partial liquidation of the Foundation.

Under these regulations, incapacitated insured persons include all those with current or foreseeable entitlement to exemption from contributions, for whom the longest waiting period for all disability benefits as defined in the pension fund regulations was still in effect on the reference date of partial or total liquidation, or for whom the Foundation does not yet have all the information it needs in order to establish or reject entitlement to a disability pension.

Insured persons who are continuing their pension provision pursuant to Art. 47a BVG (OPA) or within the framework of a sector-specific early retirement model are regarded as active insured persons under these regulations.

In the case of partial liquidation due to significant job cuts or restructuring measures by the employer, incapacitated insured persons who are made redundant will remain with the occupational benefits fund and withdraw only once they are again fully fit for work. If partial liquidation results from partial termination of the affiliation contract, they will remain with the occupational benefits fund until they are either again fully fit for work or become entitled to a disability pension. The affiliation contract remains in effect for these persons for the duration of this period.

Conditions for partial or total liquidation of an occupational benefits fund

Conditions for partial liquidation

No. 2

The conditions for a partial liquidation of the occupational benefits fund are met if

- a) the workforce of the affiliated employer is reduced significantly as the result of job cuts for economic reasons, leading to involuntary withdrawal by a significant part of active insured

persons or the transfer of a significant portion of the occupational benefits fund’s retirement assets.

- b) the affiliated employer restructures its operations and these measures cause a significant number of active insured persons to withdraw involuntarily and a significant share of the occupational benefits fund’s retirement assets to be paid out.

Restructuring of the company refers to measures the employer takes primarily for purposes other than job cuts and the dismissal of employees. In particular, it refers to organizational measures that lead to the discontinuation of tasks carried out by the company itself or the outsourcing of entire divisions to another company.

- c) the affiliation contract is partially terminated. An affiliation contract is deemed to be partially terminated if all active insured persons and possibly some pensioners withdraw from the occupational benefits fund, but at least one pensioner, an incapacitated insured person, or an active insured person who is continuing his/her pension provision pursuant to Art. 47a BVG (OPA) or within the framework of a sector-specific early retirement model remains with the fund.

Withdrawal of insured persons in accordance with sections a) and b) of the paragraph above is deemed to be significant if it takes place on the following scale – depending on the number of active and incapacitated insured persons prior to the job cuts or restructuring measures:

- up to 5 insured persons:
At least 2 involuntary withdrawals or 30% of the retirement assets
- 6 to 10 insured persons:
At least 3 involuntary withdrawals or 25% of the retirement assets
- 11 to 25 insured persons:
At least 4 involuntary withdrawals or 20% of the retirement assets
- 26 to 50 insured persons:
At least 5 involuntary withdrawals or 15% of the retirement assets
- more than 50 insured persons:
Involuntary withdrawal of at least 10% of the active insured persons or 10% of the retirement assets.

Active insured persons who, in the context of company downsizing or restructuring programs, opt to have their pension coverage continued pursuant to Art. 47a BVG (OPA) or within the framework of a sector-specific early retirement model do not count as withdrawals.

Job cuts or restructuring measures are deemed to begin on the date on which the first insured person involuntarily leaves the company and withdraws from the occupational benefits fund as a result of a company decision. The end is deemed to be the date on which the last insured person involuntarily leaves the company and withdraws from the occupational benefits fund.

An insured person is deemed to have withdrawn involuntarily if the employer terminates the employment relationship. Furthermore, withdrawal is deemed to be involuntary also if the insured person terminates employment of his own accord within 6 months of being notified about the job cuts or restructuring measures in order to preempt termination by the employer or because he rejects the new, reasonable terms of employment that are being offered.

Condition for total liquidation

No. 3

The condition for total liquidation of the occupational benefits fund is met if the affiliation contract is fully terminated.

Notification obligation of the employer

No. 4

The employer must notify the Foundation immediately of any job cuts or restructuring measures by the company that could lead to partial liquidation.

Partial or total liquidation of an occupational benefits fund

Reviewing and determining the conditions

No. 5

The occupational benefits fund commission is responsible for determining whether the conditions for partial liquidation owing to job cuts or restructuring measures have been met.

Partial or full termination of an affiliation contract generally results automatically in partial or total liquidation, except in the cases described in No. 6.

The Foundation is responsible for executing the partial or total liquidation of an occupational benefits fund. The employer and the occupational benefits fund commission must provide the Foundation immediately with all the information it requires.

Waiver of a procedure

No. 6

Total liquidation in the event of full termination of an affiliation contract does not apply if

- all active insured persons, pensioners, and incapacitated insured persons switch to the same new occupational benefits institution and there is no underfunding. In this case the occupational benefits fund's unallocated assets and any technical provisions will be transferred collectively to the new occupational benefits institution, or
- the occupational benefits fund has no active insured persons, pensioners or incapacitated insured persons at the time that the affiliation contract is terminated (liquidation of an "empty" contract).

No partial liquidation procedure is carried out if the occupational benefits fund has no unallocated assets or unallocated assets of less than CHF 100, no technical provisions and there is no underfunding.

In this event, the unallocated assets remain with the occupational benefits fund. If all active insured persons switch to the same new occupational benefits institution, they are transferred collectively.

Partial liquidation of an occupational benefits fund in the event of job cuts or restructuring measures

Reference date of partial liquidation

No. 7

The partial liquidation date is deemed to be the balance sheet date closest to the date on which job cuts or restructuring measures began (cf. No. 2). In justified cases, the occupational benefits fund commission, in consultation with the Foundation, can set a different date as the date of the partial liquidation. This reference date is decisive for calculating the occupational benefits fund's unallocated assets or shortfall (underfunding) and any technical provisions of the occupational benefits fund.

Calculation of unallocated assets/shortfall (underfunding)

No. 8

The assets are calculated as follows:

1. Available pension assets on the reference date of partial liquidation comprising
 - entitlement of the occupational benefits fund vis-à-vis the Foundation (total of the retirement assets of active, incapacitated and disabled insured persons, the pension assets of the non-reinsured retirees, the balances of the accounts of unallocated assets, and the employer contribution reserves, less any outstanding contributions),
 - claims against the employer (especially outstanding contributions),
 - assets from the group insurance contract that are owed to the occupational benefits fund (surrender values for withdrawing pensioners),
 - Any securities, account balances, and other occupational benefit fund investments valued at current market value,

less

 - vested benefits (including contributions that are kept provisionally) not yet paid to insured persons who withdrew from the occupational benefits fund on or before the reference date,
 - other liabilities of the occupational benefits fund,
 - the employer contribution reserve (including those with a usage waiver),
 - provisions for financing the cost of the partial liquidation procedure. 2. Pension assets required for actuarial reasons as at the date of partial liquidation, consisting of all retirement assets of the active, incapacitated and disabled insured persons, the pension assets of the non-reinsured retirees, the occupational benefits fund's technical provisions, and the reimbursement value of the departing pensioners arising from the Group Insurance Contract.
 3. A positive difference between the disposable pension assets and pension capital necessary for actuarial reasons equals the unallocated assets of the occupational benefits fund.
- A shortfall (underfunding) refers to a situation in which this difference is negative.
4. If there is a shortfall and there is an employer contribution reserve fund with a usage waiver, these reserves are added to the calculation as

additional available pension assets up to the amount required to eliminate the deficit.

During execution of partial liquidation, the relevant employer contribution reserve with a usage waiver is liquidated pro rata in favor of the withdrawing insured persons in accordance with the uncovered pension capital to be transferred.

Distribution plan and transfer of unallocated assets

No. 9

Unallocated assets are not distributed if the amount is less than 5% (on the reference date of partial liquidation) of the retirement assets of active and incapacitated insured persons remaining with the occupational benefits fund and less than CHF 1,000 on average per person in this group. Otherwise the following distribution plan applies:

1. Division of assets among active and incapacitated insured persons and pensioners

The group of active insured persons includes, on the one hand, those who leave the occupational benefits fund (subgroup of withdrawing active insured persons) involuntarily during the period of the company's job cuts and restructuring measures (cf. No. 2) and, on the other hand, those active and incapacitated insured persons who remain with the occupational benefits fund on conclusion of the job cuts and restructuring measures (subgroup of remaining active and incapacitated insured persons). The group of pensioners includes all recipients of retirement, partner's, orphan's or disability pensions who remain with the occupational benefits fund on completion of the company's job cuts or restructuring measures.

Under these regulations, disabled insured persons who are currently not entitled to a pension as defined in the Foundation's pension fund regulations are treated as active insured persons.

Unallocated assets are divided among both groups, whereby the total retirement assets of active and incapacitated insured persons on the reference date of the partial liquidation or the earlier withdrawal date equal the tenfold annual pensions of retirees on the reference date of the partial liquidation. The group of pensioners will not be considered if the average amount per pensioner is less than CHF 6,000.

When dividing up unallocated assets, the occupational benefits fund commission can omit

pensioners in exceptional situations if it can prove that they did not contribute significantly to the accrual of the available unallocated assets in the 5 years prior to the partial or full liquidation. The pension actuary must confirm any such circumstances.

If the pensioners are not considered, the corresponding share of the occupational benefits fund's unallocated assets goes to the group of active and incapacitated insured persons.

2. Individual division of the share of active and incapacitated insured persons

The total amount is divided individually among persons in proportion to the age group (on the reference date of partial liquidation or the earlier withdrawal date).

3. Transfer of entitlements

As a rule, unallocated assets of active insured persons who withdraw are transferred individually. If at least 10 active insured persons transfer as a group to the same new occupational benefits institution (group transfer), their portion of the unallocated assets is transferred collectively.

Unallocated assets in favor of the remaining active and incapacitated insured persons and pensioners remain with the occupational benefits fund or the Foundation and are not allocated individually.

Offsetting a shortfall (underfunding)

No. 10

If the calculation in accordance with No. 8 results in a shortfall, the amount is applied to the remaining active and incapacitated insured persons.

The shortfall is divided individually among the affected persons in accordance with the key defined in No. 9 point 2.

The share of the shortfall to be allocated to the withdrawing active insured persons is deducted individually from their vested benefits. BVG retirement assets may not be reduced in the process.

The portion of the shortfall that is exempt from this rule is allocated based on the key defined in No. 9 point 2 and deducted from the relevant vested benefits until either the full shortfall has been allocated or the relevant vested benefits have been depleted.

Any portion of the shortfall that cannot be allocated individually as well as any shortfall of the remaining active and incapacitated insured persons remains with the Foundation and is not allocated individually.

Collective entitlement to the technical provisions of the occupational benefits fund

No. 11

If at least 10 active insured persons transfer together to the same new occupational benefits institution, they will be collectively entitled to the prorated amount of any technical provisions of the occupational benefits fund, in addition to their entitlement to its unallocated assets.

Collective prorated entitlement to any technical provisions of the occupational benefits fund applies to those insured persons for whom the reserve was formed. Collective entitlement is calculated on the same basis as was used for the previous provisions.

Transfer of the entitlement to the technical provisions

No. 12

The prorated portion of any technical provisions of the occupational benefits fund to which withdrawing active insured persons are entitled is transferred collectively to the new occupational benefits institution.

Partial or total liquidation of an occupational benefits fund on partial or full termination of the affiliation contract

Reference date of partial or total liquidation

No. 13

The reference date of partial or total liquidation that is used for calculating the occupational benefits fund's unallocated assets or shortfall (underfunding) and any technical provisions is the date on which the affiliation contract was partially or fully terminated.

Calculation of unallocated assets/shortfall (underfunding)

No. 14

Calculations are done in accordance with the provisions of No. 8.

The following deviations apply:

In the absence of collective entitlement to the occupational benefits fund's or technical provisions as defined in No. 17, these assets, in deviation from No. 8.2, are not deducted from the available pension assets. In case of partial collective entitlement, this part is deducted from the available pension assets.

Any unallocated assets or shortfalls applied to the occupational benefits fund from partial liquidation of the Foundation must be taken into consideration in the calculation of available pension assets as per No. 8.1. The provisions of the regulations on the partial liquidation of a collective foundation apply.

Division and transfer of unallocated assets

No. 15

If the unallocated assets amount to less than CHF 1,000 in total and an average of less than CHF 100 per head of the active and incapacitated insured persons, no distribution takes place. Unallocated assets are used as follows:

- If all active insured persons switch to the same new occupational benefits institution, they are transferred collectively.
- If not all active insured persons switch to the same new occupational benefits institution, they are transferred to the Foundation.

Otherwise, the following distribution plan applies:

1. Division of assets among groups of persons

Unallocated assets are divided among the following groups:

- Active insured persons who leave the occupational benefits fund because the affiliation contract is partially or fully terminated,
- Active insured persons who are continuing their pension provision pursuant to Art. 47a BVG (OPA) or within the framework of a sector-specific early retirement model who remain with the occupational benefits fund,
- Pensioners who leave the occupational benefits fund because the affiliation contract is partially or fully terminated,
- Incapacitated insured persons who remain with the occupational benefits fund when the affiliation contract is partially terminated,

- Pensioners who remain with the occupational benefits fund when the affiliation contract is partially terminated.

Pensioner refers to all recipients of retirement, surviving spouse's or partner's, orphan's or disability pensions.

Under these regulations, disabled insured persons who are currently not entitled to a pension as defined in the Foundation's pension fund regulations are treated as active insured persons.

Unallocated assets are divided among the groups in the ratio of the total of active and incapacitated insured persons' retirement assets to the total of the tenfold annual pensions of the withdrawing and the remaining pensioners (on the reference date in accordance with No. 13).

Pensioners will not be taken into consideration if the portion per pensioner is less than CHF 6,000 on average.

When dividing up unallocated assets, the occupational benefits fund commission can omit pensioners in exceptional situations if it can prove that they did not contribute significantly to the accrual of the available unallocated assets in the 5 years prior to the partial or full liquidation. The pension actuary must confirm any such circumstances.

If the pensioners are not considered, their share of the occupational benefits fund's unallocated assets goes to the group of active and incapacitated insured persons and their share of the occupational benefits fund's entitlements from partial liquidation of the Foundation remains with the Foundation.

2. Distribution and transfer of withdrawing insured persons' portion

If all active insured persons or at least 10 active insured persons and any withdrawing pensioners transfer to the same new occupational benefits institution, their portion of the unallocated assets is generally transferred collectively. In all other cases, unallocated assets belonging to withdrawing insured persons are transferred individually.

The total amount of the group of withdrawing active insured persons is divided individually in proportion to their retirement assets (as of the reference date defined in No. 13).

The total amount of the group of withdrawing pensioners is divided individually among persons in proportion to the tenfold annual pension (provided they are entitled in accordance with No. 15.1).

3. Distribution of the portion of incapacitated insured persons and of active insured persons remaining with the fund and continuing their pension provision pursuant to Art. 47a BVG (OPA) or within the framework of a sector-specific early retirement model

The total amount of the group of incapacitated insured persons and of the group of active insured persons remaining with the fund and continuing their pension provision pursuant to Art. 47a BVG (OPA) or within the framework of a sector-specific early retirement model is divided among the individual persons in proportion to their retirement assets (as of the reference date defined in No. 13).

Entitlements calculated in this way are transferred individually to the incapacitated insured persons as well as the active insured persons remaining with the fund and continuing their pension provision pursuant to Art. 47a BVG (OPA) or within the framework of a sector-specific early retirement model. This does not apply to the occupational benefits fund's entitlements in favor of these persons that arise if the Foundation is partially liquidated. They remain with the Foundation and are not allocated individually.

4. Distribution of the remaining pensioners' portion

Unallocated assets in favor of the remaining pensioners are applied in proportion to the tenfold annual pension and used to increase their pensions.

This does not apply to the occupational benefits fund's entitlements in favor of the remaining pensioners that arise if the Foundation is partially liquidated. They remain with the Foundation and are not allocated individually.

5. Minimum amount

If an insured person's share amounts to less than CHF 100, this is distributed among the remaining entitled insured persons in accordance with the provisions above.

Offsetting a shortfall (underfunding)

No. 16

If the calculation in accordance with No. 14 results not in unallocated assets but in a shortfall, the amount is divided among the active insured persons withdrawing from the occupational benefits fund as a result of the partial or full termination of the affiliation contract.

Individual distribution of the shortfall to the persons affected is calculated by means of the key defined in No. 15 point 2.

The share of the shortfall to be allocated to the withdrawing active insured persons is deducted individually from their vested benefits. BVG retirement assets may not be reduced in the process.

The portion of the shortfall that is exempt from this rule is allocated based on the key defined in No. 15 point 2 and deducted from the relevant vested benefits until either the full shortfall has been allocated or the relevant vested benefits have been depleted.

Any portion of the shortfall that cannot be distributed individually as well as any shortfall of the remaining active and incapacitated insured persons remains with the Foundation and is not allocated individually.

Collective entitlement to the technical provisions of the occupational benefits fund

No. 17

If all or at minimum 10 active insured persons transfer to the same new occupational benefits institution as a group, they will be jointly entitled to the prorated amount of any technical provisions of the occupational benefits fund, in addition to their entitlement to its unallocated assets.

Collective prorated entitlement to any technical provisions of the occupational benefits fund applies to those insured persons for whom the reserve was formed. Collective entitlement is calculated on the same basis as was used for the previous provisions.

The prorated portion of any technical provisions of the occupational benefits fund to which withdrawing active insured persons are entitled is transferred collectively to the new occupational benefits institution.

Transfer of the collective entitlement to the fluctuation reserve and technical provisions of the Foundation

No. 18

Any entitlement to the fluctuation reserve and technical provisions arising from partial liquidation of the Foundation is subject to the Regulations on partial liquidation of a collective foundation.

Resolution, information and execution

Resolution on partial or total liquidation

No. 19

The occupational benefits fund commission must note in writing in the form of a resolution on partial or total liquidation the relevant material circumstances, such as the situation concerning partial or total liquidation of the occupational benefits fund, the unallocated assets or shortfall, and any technical provisions of the occupational benefits fund, as well as the distribution plan. Such a resolution is not required for the cases mentioned in No. 6.

Information for insured persons and pensioners

No. 20

If the review confirms that the conditions for partial or total liquidation of an occupational benefits fund are met and the corresponding liquidation procedure is to be carried out, the Foundation must instruct insured persons and pensioners of the situation. It will provide information on, specifically, the passing of the resolution regarding partial or total liquidation, the amount of the unallocated assets/shortfall and the technical provisions of the occupational benefits fund, as well as on the distribution plan and the next steps.

The persons affected have the right to inspect the Foundation's documents and appeal the occupational benefits fund commission's resolution within 20 days of being informed by the Foundation. If the dispute cannot be settled amicably, the Foundation sets a 20-day deadline for the persons involved by when they must present the conditions, procedure and distribution plan to the supervisory authority for review.

Insured persons and pensioners do not need to be informed if the occupational benefits fund is partially liquidated because a part of the affiliation contract is terminated and the following circumstances apply:

- The occupational benefits fund is not underfunded and has no unallocated assets, or
- The occupational benefits fund has a small amount in unallocated assets (less than 5% of the total retirement assets), all active insured persons, including any pensioners, transfer to the same new occupational benefits institution, and no unallocated assets are divided among the remaining pensioners in accordance with No. 15.1.

Execution

No. 21

The distribution plan is executed once it has become legally valid. Entitlements from these regulations are due 20 days after the distribution plan becomes legally valid.

The distribution plan becomes legally valid if

- no appeals were lodged, or
- all appeals were settled amicably and the supervisory authority has confirmed in writing that no complaint was received during the 20-day period, or
- the supervisory authority has made a legally valid decision on the conditions, procedure and distribution plan (confirmation of legal validity).

If the balance between the available pension assets and the required pension capital changes by more than 10% of total net assets between the reference date of partial liquidation and the date on which the assets are transferred, the unallocated assets to be transferred or the deficit to be applied, as well as the fluctuation reserve and the technical provisions, will be adjusted accordingly.

If, in case of a shortfall, the transferred vested benefits were not or insufficiently reduced, the insured person must repay the excess amount that was transferred.

Procedure in special cases

Employer contribution reserves that have lost their purpose

No. 22

If partial or full liquidation results in employer contribution reserves that have lost their original purpose because the employer no longer has employees to be insured, the employer contribution reserves are liquidated and transferred to the occupational benefits fund's unallocated assets.

Final provisions

Cost contribution

No. 23

Costs incurred in connection with the partial or total liquidation of an occupational benefits fund and the expert opinions necessary for settling appeals and complaints are invoiced as cost contributions in accordance with the cost regulations.

Cases that do not fall under these regulations

No. 24

The Foundation decides individually and in compliance with statutory provisions on any cases that do not expressly fall under these regulations.

Issue and amendment of the regulations

No. 25

These regulations and any later amendments are issued by the Board of Trustees and approved by the supervisory authority.

Entry into force

No. 26

These regulations are issued by the Board of Trustees on December 1, 2021, and enter into force as soon as they are approved by the supervisory authority. They replace the version of January 1, 2019.

The date on which a material circumstance arises determines which version of the regulations applies. The date refers to the date when job cuts or restructuring measures are completed, or to the termination date in the case of partial or full termination of an affiliation contract.