



Occupational benefits

Regulations on the partial liquidation of a collective foundation

AXA Foundation for Supplementary Benefits, Winterthur

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Purpose, scope, and definition of terms

No. 1

These regulations are based on Art. 53b and 53d of the Swiss Occupational Pensions Act (BVG/OPA), Art. 27g and 27h of the Occupational Pension Ordinance (BVV 2/OPO 2), and Art. 18a of the Vested Benefits Act (FZG/VBA). They govern the conditions and procedure for partial liquidation of the AXA Foundation for Supplementary Benefits, Winterthur (hereinafter referred to as "Foundation"). Separate regulations govern the partial and total liquidation of occupational benefits funds affiliated with the Foundation.

Under these regulations, active insured persons also refers to incapacitated persons and disabled persons who are currently not entitled to a pension.

Incapacitated persons refers to insured persons 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 is still in effect on the date of partial 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.

Under these regulations, pensioners refers to all recipients of a retirement, partner's, or orphan's pension, or of a pension share pursuant to Art. 124a of the Swiss Civil Code (ZGB/SCC), provided they are not reinsured, as well as recipients of a disability pension. Recipients of a reinsured retirement, partner's, or orphan's pension, or of a pension share pursuant to Art. 124a ZGB (SCC), for which the Foundation has no pension capital, are not taken into account and are excluded from a partial liquidation procedure of the Foundation.

A collective withdrawal (group) is deemed to occur if all withdrawing or at least 10 withdrawing insured persons and/or pensioners of an occupational benefits fund transfer to the same new occupational benefits institution together.

The term "retirement assets" refers to actively insured persons and recipients of a disability pension.

The term "pension capital" refers to pensioners whose pension is not reinsured.

Conditions for partial liquidation of the Foundation

Conditions for partial liquidation

No. 2

The conditions for partial liquidation of the Foundation are met if at least one of the following circumstances applies:

- a) Full or partial termination of one or several affiliation contracts within a calendar year if, as a result,
- at least 4.5% of the total portfolio of active insured persons and pensioners and
 - at least 4.5% of the total retirement assets of active insured persons and pensioners and the entire pension capital of pensioners leaves the Foundation.

An affiliation contract is deemed to be partially terminated if all active insured persons and possibly some pensioners withdraw from the occupational benefits fund, except for at least one pensioner or incapacitated insured person.

- b) An affiliated employer makes significant job cuts if, as a result,
- the number of active insured persons in the Foundation is reduced by at least 1.9‰ as a result of the involuntary withdrawals and
 - the retirement assets of active insured persons in the Foundation is reduced by a total of 1.9‰ as a result of the involuntary withdrawals.
- c) An affiliated employer implements restructuring measures if, as a result of involuntary withdrawals,
- at least 1.6‰ of all active insured persons leave the Foundation and
 - a total of at least 1.6‰ of the retirement assets flow out of the Foundation.

Insured persons and pensioners of occupational benefits funds for which the conditions for partial liquidation pursuant to provisions a), b), or c) are not met do not have any entitlements from the partial liquidation of the Foundation.

The restructuring of a company is understood to mean measures implemented by the employer that do not primarily target the reduction of the workforce and the dismissal of employees. Instead they are rather organizational measures that lead to the discontinuation of tasks carried out by the company itself or the outsourcing or transfer of entire company divisions to another company.

Job cuts or restructuring measures start with the first and end with the last involuntary withdrawal caused by a single economic event within 12 months of a corresponding resolution by the relevant bodies of the affiliated employer. If the job cuts or restructuring measures take place over a longer or shorter period, this period will be the decisive factor.

An insured person is deemed to have withdrawn involuntarily if their employment relationship is terminated by the employer. However, a withdrawal is also regarded as involuntary if the insured person terminates their employment relationship themselves within 6 months of receiving notice of the job cuts or corporate restructuring in order to preempt termination by the employer or because they do not accept the new employment conditions that are being offered.

The employer must notify the Foundation immediately of any job cuts or restructuring measures by the company. It must inform the affected insured persons of the timeframe in which the job cuts or restructuring measures are to take place, the reasons for the terminations, as well as the termination dates of employment relationships.

Procedure for partial liquidation of the Foundation

Execution of partial liquidation

No. 3

The Foundation is responsible for executing the procedure.

Reference date of partial liquidation

No. 4

In the case of a partial or total termination of the contract as of December 31, the termination date is the reference date of partial liquidation. If the contract is terminated with effect from a different date, the reference date of the partial liquidation is the next balance sheet date after the contract is fully or partially terminated. This reference date is decisive for calculation of the technical provisions, the fluctuation reserve, and the unallocated assets/shortfall (underfunding).

The reference date of the partial liquidation in the event of job cuts or restructuring measures is deemed to be the balance sheet date closest to when the job cuts or restructuring measures began.

Calculation of the technical provisions, the fluctuation reserve, and the unallocated assets/shortfall (underfunding)

No. 5

The calculation of the technical provisions, the fluctuation reserve, and the unallocated assets/shortfall (underfunding) is based on the annual commercial balance sheet as of December 31 prepared in accordance with Swiss GAAP FER 26 and the partial liquidation balance sheet as of the same date.

When preparing the partial liquidation balance sheet, appropriate account needs to be taken of the interests of the Foundation's remaining portfolio; technical provisions for the remaining active insured persons and pensioners may be increased or newly formed if the occupational pension actuary proves the additional requirement.

Entitlement to technical provisions and the fluctuation reserve

No. 6

In the event of a group withdrawal there is a collective, prorated entitlement to the technical provisions and the fluctuation reserve. When calculating the entitlement, the amount that the withdrawing group contributed to the formation of the provisions and the fluctuation reserve is taken into account. However, the entitlement to provisions only exists insofar as actuarial risks are also transferred.

The entitlement to the fluctuation reserve and technical provisions does not arise if the partial liquidation of the Foundation was caused by the transferring group.

1. Technical provisions

If a technical provision can be individually assigned to the group in accordance with the provisions in the Regulations on the creation of provisions and reserves, this ratio is decisive for the calculation of the collective entitlement. Where a general provision has been formed, the group share is calculated as the ratio of the retirement assets and pension capital being transferred to the retirement assets and pension capital of the total portfolio.

If the affiliation contract has been or was in force for fewer than 10 years, the development of the technical provisions as a percentage of the retirement assets and pension capital during the term of the contract is taken into account.

2. Fluctuation reserve

The portion of the fluctuation reserve attributable to the group is calculated as the ratio of the retirement assets and pension capital being transferred to the retirement assets and pension capital of the total portfolio.

If the affiliation contract has been or was in force for fewer than 10 years, the development of the fluctuation reserve as a percentage of the retirement assets and pension capital during the term of the contract is taken into account.

Transfer of the entitlement to technical provisions and the fluctuation reserve

No. 7

The prorated entitlement to technical provisions and the fluctuation reserve is transferred collectively to the new occupational benefits institution.

Entitlement to unallocated assets

No. 8

The insured persons and pensioners withdrawing from the Foundation as a result of contract termination, job cuts, and restructuring measures have a prorated entitlement to unallocated assets.

The division of unallocated assets among the withdrawing insured persons and pensioners is based on the ratio of the respective retirement assets and pension capital to the total retirement assets and pension capital of the Foundation.

If the affiliation contract has been or was in force for fewer than 10 years, the development of the unallocated assets as a percentage of the retirement assets and pension capital during the term of the contract is taken into account.

Unallocated assets are not distributed if the unallocated assets average less than CHF 100 per person. Amounts of less than CHF 100 are not paid out and remain with the Foundation.

Transfer of unallocated assets

No. 9

In the event of a group withdrawal, the portion of the unallocated assets is transferred collectively to the new occupational benefits institution. In the other cases, the unallocated assets are transferred individually.

Offsetting a shortfall (underfunding)

No. 10

If the calculation in accordance with No. 5 results in a shortfall, the ratio defined in No. 8 is applied. The shortfall is firstly offset on a pro rata basis against the technical provisions being transferred. The remaining shortfall is deducted on a pro rata basis from the retirement assets and pension capital of the insured persons and pensioners affected by the partial liquidation and withdrawing from the Foundation. BVG (OPA) retirement assets may not be reduced.

If the affiliation contract has been or was in force for fewer than 10 years, the development of the shortfall as a percentage of the retirement assets and pension capital during the term of the contract is taken into account.

The Foundation may pay out reduced termination (withdrawal) benefits on a provisional basis. If these benefits were lower than the termination benefits under the regulations less the prorated shortfalls, the differences are subsequently reimbursed. If the non-reduced or insufficiently reduced termination (withdrawal) benefits and non-reduced or insufficiently reduced pension capital have already been transferred, the affected persons and the new occupational benefits institution must repay the difference to the Foundation.

Resolution, information, and execution

Resolution on partial liquidation

No. 11

The important facts, such as the circumstances of the partial liquidation of the Foundation, the amount in unallocated assets or shortfall, the technical provisions and the fluctuation reserve, as well as the distribution plan, are noted in writing in the form of a resolution on partial liquidation by the Board of Trustees.

Information

No. 12

If the review confirms that the conditions for partially liquidating the Foundation are met, the Foundation informs the persons affected by the partial liquidation and withdrawing, as well as the persons remaining in the Foundation, about the resolution on partial liquidation, the distribution plan, the entitlements, and any further procedures.

This information may also be provided via the occupational benefits fund commission. In this case the occupational benefits fund commission is required to forward the information to the affected persons in the occupational benefits funds within 10 working days. Furthermore, the Foundation announces the partial liquidation in the Swiss Commercial Gazette (SOGC).

The active insured persons, pensioners, and employers have the right to inspect documents at the Foundation within 30 days of the information being issued, unless such inspection is precluded for reasons relating to data protection law, and to object in writing to the resolution of the Foundation's Board of Trustees. If the dispute cannot be settled amicably, the Foundation sets a 30-day deadline for the conditions, procedure, and distribution plan to be submitted to the supervisory authority for review.

Once the deadline has passed, the Foundation informs the supervisory authority about any objections it received and treatment of the matter.

In the Annual Report, the Foundation provides information about whether the conditions for a partial liquidation have been met or not.

Execution

No. 13

The distribution plan is executed once it has become legally valid. Entitlements from these regulations are due 30 days after the distribution plan becomes legally valid.

The distribution plan becomes legally valid if

- no objections/appeals were lodged, or
- all objections/appeals were settled amicably and the supervisory authority has confirmed in writing that it received no complaint during the 30-day period, or
- the supervisory authority or a court has made a legally valid decision on the conditions, procedure, and distribution plan.

If the Foundation's coverage ratio changes by more than 5 percentage points between the reference date of partial liquidation and the date on which the assets are transferred, the unallocated assets to be transferred or the shortfall to be applied, as well as the technical provisions and the fluctuation reserve, are adjusted accordingly.

The entitlements to the share of technical provisions, the fluctuation reserve, and the unallocated assets do not attract interest during the partial liquidation procedure. The entitlements to default interest based on the minimum BVG (OPA) interest rate attract interest from the due date.

Final provisions

Cases that do not fall under these regulations

No. 14

The Foundation decides any cases that are not expressly governed by the regulations set out herein by mutatis mutandis application in accordance with the statutory provisions.

Issue and amendment of the regulations

No. 15

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

Entry into force

No. 16

These regulations were issued by the Board of Trustees and enter into force on June 1, 2023, following approval by the supervisory authority. They replace the version of January 1, 2019.

The date of a material circumstance determines which version of the regulations applies.