



Occupational benefits

Regulations on the partial and total liquidation of occupational benefits funds

AXA Foundation 1e, Winterthur

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Purpose, scope, and definition of terms

No. 1

These regulations govern the conditions and procedure for partial and total liquidation of 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 refers to persons with current or foreseeable entitlement to exemption from contributions for whom the longest waiting period for all disability benefits as defined in the occupational benefits fund regulations is 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.

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. In the case of partial liquidation because of partial termination of the affiliation contract, they will remain with the occupational benefits fund until they are again fully fit for work or eligible for 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, causing involuntary withdrawal from the occupational benefits fund by a significant number of active insured persons and the payout of a significant share of the occupational benefits fund's retirement assets.

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, but 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.

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 or an incapacitated insured person remains with the fund.

Withdrawal of insured persons in accordance with letters a) and b) of the section 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 beginning of 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.

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 the company decision. The end is deemed to be the date of withdrawal on which the last insured

person leaves the company involuntarily and withdraws from the occupational benefits fund.

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.

Conditions for total liquidation

No. 3

The conditions for total liquidation of the occupational benefits fund are met if the affiliation contract is terminated in its entirety.

Employer's duty to notify

No. 4

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

Partial or total liquidation procedure for an occupational benefits fund

Review and identification of the conditions

No. 5

The occupational benefits fund commission must determine whether the conditions for partial liquidation owing to job cuts or corporate restructuring have been met.

If an affiliation contract is terminated partially or in full, a partial or total liquidation procedure is activated automatically, except in the cases set out in section 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 to carry out its activities when requested to do so.

Waiver of liquidation 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. In this case the occupational benefits fund's unallocated assets 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 when 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. In this case, 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 corporate restructuring

Reference date of partial liquidation

No. 7

The reference date of partial liquidation is deemed to be the balance sheet date closest to when job cuts or restructuring measures began (see section No. 2). In justified cases, the occupational benefits fund commission, in consultation with the Foundation, may set a different date as the reference date. This reference date is the date used for calculating the amount of the occupational benefits fund's unallocated assets.

Calculation of unallocated assets

No. 8

The calculation is carried out as follows:

1. Available pension assets as at the reference date of the partial liquidation, comprising
 - repayment values from the group insurance contract for active and incapacitated insured persons, less any contributions that are owed,
 - repayment values for pensioners who are withdrawing,
 - claims against the employer (in particular outstanding contributions),

- securities, account balances, and other occupational benefit fund investments valued at current market value,

less

- vested benefits not yet paid out (including any vested benefits retained provisionally) to insured persons who withdrew on or before the reference date,
- other liabilities of the occupational benefits fund,
- the employer contribution reserve (including those with a waiver of use),
- provisions established to finance the partial liquidation procedure and any stamp duty levied in connection with transfers of securities.

Any unallocated assets/shortfalls attributed to the occupational benefits fund on account of a partial liquidation of the Foundation must also be taken into consideration.

2. Pension capital required for actuarial reasons as at the reference date of partial liquidation, consisting of all retirement assets of the active, incapacitated, and disabled insured persons, as well as any actuarial reserves that may be needed in accordance with the actuarial basis of the new occupational benefits institution for pensioners to be transferred to the new occupational benefits institution, up to a maximum of the repayment value of the pensions in accordance with section No. 8.1 herein.
3. A positive difference between the available pension assets and the pension capital necessary for actuarial reasons equals the unallocated assets of the occupational benefits fund.

Distribution plan and transfer of unallocated assets

No. 9

Unallocated assets are not distributed if the amount is less than 5% of the retirement assets (as at the date of the partial liquidation) of the active and incapacitated insured persons remaining with the occupational benefits fund and on average less than CHF 1,000 per person in this group. If this is not the case, 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 as active

insured persons during the period of the company's job cuts or restructuring measures (see section 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 or restructuring measures (subgroup of remaining active and incapacitated insured persons). The group of pensioners includes all recipients of a partner's pension, orphan's pension, or disability pension 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 occupational benefits 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 pensioners 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, as an exception, omit pensioners by presenting proof that they made no significant contribution toward the accrual of the available unallocated assets in the 5 years prior to the partial or total liquidation. The pension actuary must confirm any such circumstances.

If the pensioners are not included, 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 their retirement assets (on the reference date of partial liquidation or the earlier withdrawal date).

3. Transfer of entitlements

As a rule, unallocated assets of withdrawing active insured persons 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.

Partial or total liquidation of an occupational benefits fund if the affiliation contract is partially or fully terminated

Reference date of partial or total liquidation

No. 10

The reference date of partial or total liquidation that is used for calculating the occupational benefits fund's unallocated assets is the date on which the affiliation contract is partially or fully terminated.

Calculation of the unallocated assets/shortfall (underfunding) from partial liquidation of the Foundation

No. 11

Any unallocated assets/shortfalls attributed to the occupational benefits fund on account of a partial liquidation of the Foundation must also be taken into consideration. The provisions of the Regulations on the partial liquidation of a collective foundation apply.

Division and transfer of unallocated assets

No. 12

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.

If this is not the case, the following distribution plan applies:

1. Division of assets among groups of persons

Unallocated assets are divided among the following groups of persons:

- active insured persons who leave the occupational benefits fund because the affiliation contract is partially or fully terminated,

- 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.

The term “pensioner” refers to all recipients of a partner’s pension, an orphan’s pension, or a disability pension.

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

Unallocated assets are divided among the groups in the ratio of the total in 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 section No. 10).

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, as an exception, omit pensioners by presenting proof that they made no significant contribution toward the accrual of the available unallocated assets in the 5 years prior to the partial or total liquidation. The pension actuary must confirm any such circumstances.

If the pensioners are not included, 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 the share of withdrawing insured persons

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 attributed individually.

The total amount of the group of withdrawing active insured persons is attributed individually to the individual persons in proportion to their retirement assets (as at the reference date defined in section No. 10).

The total amount of the group of withdrawing pensioners is divided individually among persons (provided they are entitled in accordance with section No. 12.1) in proportion to the tenfold annual pension.

3. Distribution of the share of incapacitated insured persons

The total amount of the group of incapacitated insured persons is divided among individual persons in proportion to their retirement assets (as at the reference date defined in section No. 10).

Entitlements calculated in this way are transferred individually to the incapacitated insured persons. 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 attributed to these remaining pensioners 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.

Resolution, information, and execution

Resolution on partial or total liquidation

No. 13

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 and the amount of the unallocated assets or shortfall, as well as the distribution plan. Such a resolution is not required for the cases mentioned in section No. 6.

Information for insured persons and pensioners

No. 14

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, via the occupational benefits fund commission, of the facts and the next steps.

As soon as the distribution plan has been drawn up and the resolution on partial or total liquidation has been passed, the Foundation must inform all affected persons about, specifically, the resolution on partial or total liquidation, the amount of the occupational benefits fund's unallocated assets or shortfall, as well as the distribution plan.

The persons affected have the right to view the Foundation's documents and appeal the occupational benefits fund commission's resolution within 20 days of the information being issued. If the dispute cannot be settled amicably, the Foundation sets a 20-day deadline for the persons involved for the supervisory authority to be contacted and a review of the conditions, procedure, and distribution plan to be carried out.

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, switch to the same new occupational benefits institution, and no unallocated assets are divided among the remaining pensioners in accordance with section No. 12.1.

Execution

No. 15

The distribution plan is executed once it has become legally valid. Entitlements under 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 it received no complaint 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 of the available pension assets and the required pension capital changes by more than 10% of the total net assets between the reference date for the partial liquidation and the date on which the assets are transferred, the unallocated assets to be transferred are adjusted accordingly.

Procedure in special cases

Employer contribution reserves that have lost their purpose

No. 16

If partial or total liquidation results in employer contribution reserves and these can no longer be used for 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. 17

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. 18

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. 19

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

Entry into force

No. 20

These regulations are issued by the Board of Trustees on January 1, 2023, and enter into force as soon as they are approved by the supervisory authority.