



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

### 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"). They are based on the provisions of Art. 18a of the Swiss Vested Benefits Act (FZG/VBA), Art. 53b and 53d of the Swiss Occupational Pensions Act (BVG/OPA), and Art. 27g and 27h of the Occupational Pension Ordinance (BVV 2/OPO 2). Separate regulations govern the partial liquidation of the Foundation.

## Conditions for partial or total liquidation of an occupational benefits fund

### Conditions for partial liquidation

#### No. 2

1. The conditions for the partial liquidation of an occupational benefits fund are met if:
  - a) the workforce of an employer affiliated with the occupational benefits fund is reduced significantly;
  - b) an employer affiliated with the occupational benefits fund restructures its operations;
  - c) affiliation contracts are partially terminated; or
  - d) the affiliation contract is terminated by mutual agreement.
2. The workforce of an affiliated employer is deemed to have been reduced significantly if the number of active insureds in the occupational benefits fund is reduced significantly through involuntary withdrawals and, as a result, the withdrawal benefits (termination benefits) of all active insureds in the occupational benefits fund are simultaneously reduced significantly (see No. 5).
3. A restructuring is deemed to occur if former areas of activity at an affiliated employer are merged, discontinued, sold, outsourced, or changed in some other way and this simultaneously results in the involuntary withdrawal of a significant proportion of the active insured persons in the occupational benefits fund, whose share of the total withdrawal benefits of the occupational benefits fund is significant (see No. 6). Job cuts per se do not constitute a restructuring; instead, a restructuring is deemed, for example, to be the closure and outsourcing of some or all parts of the business to other employers, resulting in the insured members leaving the occupational benefits fund. New ownership arrangements that result in all members remaining in the occupational benefits fund or changes to the organizational structure that do not involve redundancies are not considered a restructuring within the meaning of this provision.
4. Only involuntary withdrawals are taken into account when reviewing whether the conditions for a partial liquidation as defined in No. 2.1 a) and b) have been met. A withdrawal is deemed involuntary if the employment contract of an active insured is terminated by the employer and that person is not offered a position that they can be reasonably expected to take up. Withdrawal is likewise deemed to be involuntary if the active insured person terminates employment of their own accord within 6 months of being notified about the reduction in the workforce through job cuts or restructuring measures, in order to preempt termination by the employer. Involuntary withdrawals for other reasons, such as the expiration of fixed-term contracts, terminations for disciplinary reasons, terminations for performance reasons, and transfers to the portfolio of pensioners as a result of early or ordinary retirement, death, or disability should not be taken into account when determining the withdrawal portfolio.
5. The reduction in the workforce is deemed to be significant if within an occupational benefits fund
  - with up to (and including) 10 active insureds: There are at least 3 involuntary withdrawals involving at least 25% of the withdrawal benefits of all active insureds;
  - with at least 11 and up to (and including) 25 active insureds: There are at least 4 involuntary withdrawals involving at least 20% of the withdrawal benefits of all active insureds;
  - with at least 26 and up to (and including) 50 active insureds: There are at least 5 involuntary withdrawals involving at least 15% of the withdrawal benefits of all active insureds;
  - with more than 50 active insureds: There are at least 10 involuntary withdrawals involving at least 10% of the withdrawal benefits of all active insureds.
6. The proportion of involuntary withdrawals in the event of restructuring is deemed significant if within an occupational benefits fund
  - with up to (and including) 10 active insureds: There are at least 2 involuntary withdrawals

- involving at least 17% of the withdrawal benefits of all active insureds;
- with at least 11 and up to (and including) 25 active insureds: There are at least 3 involuntary withdrawals involving at least 15% of the withdrawal benefits of all active insureds;
  - with at least 26 and up to (and including) 50 active insureds: There are at least 4 involuntary withdrawals involving at least 12% of the withdrawal benefits of all active insureds;
  - with more than 50 active insureds: There are at least 7 involuntary withdrawals involving at least 7% of the withdrawal benefits of all active insureds.
7. The affiliated employer undertakes to immediately notify the Foundation of a reduction in the number of employees insured with the Foundation or of the restructuring of the company. The affiliated employer notifies the Foundation in writing of the affected active insureds (voluntary and involuntary withdrawals) as defined in No. 2.2 and No. 2.3. In particular, the circumstances of the job cuts, the termination dates of employment relationships, as well as the reasons for the terminations, must be disclosed.
8. An affiliation contract is deemed to be partially terminated:
- if an affiliated employer terminates the affiliation contract;
  - if the Foundation terminates an affiliation contract;
  - if the affiliation contract is terminated by mutual agreement;
  - if the affiliation contract is terminated as a result of liquidation due to the cessation of business or bankruptcy of an affiliated employer;
- and at least one active insured person, pensioner, or incapacitated insured person remains in the occupational benefits fund.
9. If several conditions pursuant to No. 2.2, No. 2.3, and/or No. 2.8 are deemed to be met concurrently, they are only considered to meet the conditions for one and the same partial liquidation if they are intrinsically connected.
10. Under these regulations, the term “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. Under these regulations, incapacitated insured persons are treated as active insured persons.
11. In the case of partial liquidation due to significant job cuts or restructuring measures, incapacitated insured persons who are affected by an involuntary withdrawal 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 also remain with the occupational benefits fund until they are again fully fit for work or eligible for a disability pension.
12. The term “pensioner” refers to all recipients of retirement, partner’s, orphan’s, or disability pensions insofar as these are not reinsured.
13. Under these regulations, the retirement assets of disabled insured persons who are currently entitled/not entitled to a pension as defined in the Foundation’s regulations are treated as retirement assets of active insured persons.
14. Insureds 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.

### **Condition for total liquidation**

#### **No. 3**

1. The condition for total liquidation of the occupational benefits fund is met if the affiliation contract is fully terminated.
2. An affiliation contract is deemed to be fully terminated:
  - if an affiliated employer terminates the affiliation contract;
  - if the Foundation terminates an affiliation contract;
  - if the affiliation contract is terminated by mutual agreement;
  - if the affiliation contract is terminated as a result of liquidation due to the cessation of business or bankruptcy of an affiliated employer;
 and the last remaining insured persons have left.
3. If at the time of the contract termination the occupational benefits fund has neither active insured persons nor pensioners (liquidation of

an empty contract), the Foundation decides on the distribution of the unallocated assets and the employer contribution reserve (including the distribution plan).

## **Partial or total liquidation procedure for an occupational benefits fund**

### **Implementation of a total or partial liquidation**

No. 4

1. The occupational benefits fund commission is responsible for determining whether a partial or total liquidation is to be implemented. If the affiliation contract is partially or fully terminated, the partial or total liquidation is triggered without the need to wait.
2. 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.
3. At least once a year at the time of annual reporting, the Board of Trustees checks whether the conditions for a partial or total liquidation of an occupational benefits fund are met and provides justification for its decision in summarized form.
4. If an occupational benefits fund is liquidated in part or in full, the Foundation determines the funds to be transferred.
5. The implementation of a partial or total liquidation procedure is waived if the occupational benefits fund has no unallocated assets and no technical provisions.
6. The implementation of a total liquidation is waived if the occupational benefits fund switches to a new pension institution completely.

### **Reference dates and bases**

No. 5

In the event of a workforce reduction or restructuring measures, the workforce reduction or restructuring measures implemented within 12 months of the start of the job cuts or restructuring measures are decisive. Job cuts or restructuring measures are deemed to begin on the date on which the first active insured person involuntarily leaves the affiliated employer and withdraws from the occu-

pational benefits fund as a result of the company decision. If the cuts take place over a longer or shorter period, this period will be the decisive factor.

The reference date of the partial liquidation due to significant job cuts or restructuring measures is deemed to be the balance sheet date of the annual financial statements closest to when the job cuts or restructuring measures began. This reference date also applies to the evaluation of the financial situation. This reference date is used for calculating the amount of unallocated assets and any technical provisions.

The reference date for partial or total liquidation in the event of termination of an affiliation contract is the date of the partial or total termination of the affiliation contract that triggers a partial or total liquidation as defined in No. 2.8 or No. 3.2.

### **Calculation of assets to be distributed**

No. 6

The unallocated assets of the occupational benefits fund are the portion of assets not tied to the coverage of obligations, pension liabilities, technical provisions, or the employer contribution reserve. They correspond to the balance of the “unallocated assets” account held by the Foundation on behalf of the occupational benefits fund on the reference date, less costs as specified in the cost regulations.

Technical provisions of the occupational benefits fund are calculated in accordance with the regulations on forming provisions and reserves. They correspond to the balance of the “technical provisions” account held by the Foundation on behalf of the occupational benefits fund on the reference date. If, in the event of partial or total liquidation due to contract termination, the technical provisions are no longer required, and there is no collective entitlement to them, they are transferred to the unallocated assets.

In the event of a partial or total liquidation due to contract termination, the employer contribution reserves are transferred to the employer’s new occupational benefits institution. If the employer contribution reserves can no longer be used for their original purpose, they are liquidated, transferred to the occupational benefits fund’s unallocated assets, and used in the context of the partial or total liquidation.

### **Entitlement to technical provisions of the occupational benefits fund**

No. 7

If, during the partial liquidation of the occupational benefits fund, several active insured persons and/or pensioners transfer to the same new occupational benefits institution as a group and at the same time (collective withdrawal), they will be collectively entitled to the prorated technical provisions of the occupational benefits fund. Technical provisions of the occupational benefits fund will only be included in the transfer if the corresponding risks are also transferred. A collective withdrawal is deemed to occur if at least 10 active insured persons and/or pensioners transfer.

The collective share of the technical provisions of the occupational benefits fund applicable to the withdrawal portfolio is usually calculated as the ratio of the withdrawal benefits of active insured persons being transferred as well as the pension capital of pensioners to the respective actuarially required pension capital of the total portfolio (active insured persons and pensioners). If a technical provision can be individually assigned based on the calculation rule defined in the regulations on the creation of provisions and reserves, this ratio is decisive for the calculation of the collective entitlement.

The collective entitlement to technical provisions of the occupational benefits fund does not arise if the partial liquidation was caused by the group of insured persons collectively leaving.

### **Entitlement to unallocated assets**

No. 8

The unallocated assets are recorded as a percentage of the withdrawal benefits of the active insureds with an entitlement and the pension capital of the pensioners on the reference date of the partial liquidation. The withdrawing active insured persons'/pensioners' portion of the unallocated assets of the occupational benefits fund is derived by applying this percentage rate to the amount of their withdrawal benefit or pension capital on the reference date. Unallocated assets are not distributed if the unallocated assets of the pensioners and the active insured persons in the occupational benefits fund averages less than CHF 100 per person.

The collective portion of the unallocated assets of the occupational benefits fund attributable to the withdrawal portfolio in the event of a group

withdrawal is transferred collectively to the new occupational benefits institution. In the other cases, the unallocated assets of the occupational benefits fund are individually credited to the withdrawal benefits of the withdrawing active insured persons. A one-off payment is made in the case of pensioners.

The occupational benefits fund commission can, with the consent of the pension actuary, 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.

In the event of full liquidation of an occupational benefits fund following total termination of the affiliation contract, the following deviations apply:

- If there is no collective entitlement to the technical provisions of the occupational benefits fund pursuant to No. 7, these assets are converted into unallocated assets. If there is only a partial collective entitlement, the remaining portion of the technical provisions is converted into unallocated assets.
- If following a total liquidation 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 insured persons, no distribution takes place.

Unallocated assets are used as follows:

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

### **Interest**

No. 9

The entitlements to unallocated assets and to the share of the technical provisions of the occupational benefits fund do not attract interest during the partial or total liquidation procedure. Once the procedure has been legally concluded, an obligation to pay interest on arrears as defined in the FZG/VBA arises 30 days after conclusion of the legal process.

## Information, objection, and execution

### Resolution on partial or total liquidation

No. 10

The relevant material circumstances, such as the situation concerning partial or total liquidation of the occupational benefits fund, the amount of the unallocated assets and any technical provisions of the occupational benefits fund, as well as the distribution plan, must be noted in writing by the occupational benefits fund commission in the form of a resolution on the partial or total liquidation.

### Information

No. 11

The occupational benefits fund commission informs the persons affected by the partial or total liquidation of the following in writing:

- the occurrence of a partial or total liquidation and the reasons for it;
- the date (reference date) of the partial or total liquidation;
- the total amount of the unallocated assets;
- the withdrawal portfolio and the distribution plan;
- if applicable, the amount in CHF allocated to the affected person;
- the amount and composition of any collectively transferred provisions;
- the form of transfer (individual or collective);
- the right to lodge an objection with the Foundation and to complain to the supervisory authority and subsequently to the Federal Administrative Court.

The occupational benefits fund commission is required to forward this information to all its active insured persons and pensioners within 10 working days of the resolution.

The non-entitled persons, i.e. the other active insured persons and pensioners, are notified of the partial liquidation as well as the right of inspection and the right of objection in an appropriate manner.

### Inspection and objection

No. 12

The active insured persons and pensioners, as well as the affiliated companies, have the right to inspect documents at the Foundation for a period of 30 days following notification in accordance with No. 11, unless such inspection is precluded

for reasons relating to data protection law, and to lodge a written objection with the Foundation against the occupational benefits fund commission's resolution.

If any objections cannot be settled amicably, the Foundation makes a decision regarding the objection and issues a 30-day deadline for the objecting parties, together with the notification of the decision on the objection, by when the conditions, procedure, and distribution plan must be submitted to the supervisory authority for review.

### Execution

No. 13

Once the Foundation has dealt with all written questions or complaints and if no application for a review has been lodged with the supervisory authority, or if a legally valid decision has been made, the Foundation executes the total or partial liquidation. The auditors must confirm the proper execution of the total or partial liquidation.

## Final provisions

### Issue and amendment of the regulations

No. 14

The Board of Trustees may amend these regulations at any time, subject to the approval of the supervisory authority, in accordance with the statutory provisions and the purpose of the Foundation.

### Entry into force

No. 15

These regulations were issued by the Board of Trustees on November 28, 2023, and following approval by the relevant supervisory authority enter into force on December 1, 2023.