



AXA Foundation for Occupational Benefits,  
Principality of Liechtenstein

Occupational benefits

## **Regulations on the partial and total liquidation of occupational benefits funds**

AXA Foundation for Occupational Benefits, Principality of Liechtenstein

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## Purpose and scope

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”).

The termination of affiliation contracts can simultaneously lead to the fulfillment of the condition for a partial liquidation of the Foundation. Separate regulations govern the partial liquidation of the Foundation.

### Definition of terms

#### Art. 1

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

#### Art. 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/or 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. 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.

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 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 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

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**

Art. 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**

Art. 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**

Art. 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 Art. 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**

Art. 6

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

- the occupational benefits fund as a whole transfers to another pension provider 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 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 and no technical provisions, there is no underfunding, and there is no group entitlement to a share in the fluctuation reserve or the technical provisions of the Foundation.

## **Partial liquidation of an occupational benefits fund in the event of job cuts or corporate restructuring**

### **Reference date of partial liquidation**

Art. 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 Art. 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 used for calculating the amount in unallocated assets and/or the shortfall (underfunding), as well as any technical provisions of the occupational benefits fund.

### **Calculation of unallocated assets/shortfall (underfunding)**

Art. 8

The unallocated assets are calculated as follows:

1. Available pension assets as at the reference date of the partial liquidation, comprising

- entitlement of the occupational benefits fund vis-à-vis the Foundation (total in retirement assets of active, incapacitated, and disabled insured persons, plus the balance of the accounts of unallocated assets and the employer contribution reserves, less any outstanding contributions),
- assets from the group insurance contract that are owed to the occupational benefits fund (repayment values for withdrawing pensioners),
- claims against the employer (in particular outstanding contributions),

less

- vested benefits not yet paid out (including any vested benefits retained provisionally) 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 waiver of use),
- a provision set up to finance the partial liquidation procedure.

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, the technical provisions of the occupational benefits fund, 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 Art. 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.

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 with a waiver of appropriation, these reserves are factored into the calculation as additional available pension assets, up to the amount required to eliminate the shortfall.

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

If there are significant changes in the assets or liabilities between the reference date of the partial liquidation and the date of transfer of the assets, the unallocated assets or the shortfall may be adjusted commensurately.

### **Distribution plan and transfer of unallocated assets**

Art. 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 Art. 2) and, on the other hand, those 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 retirement 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 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, 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 individual distribution of the total amount to the individual persons is done in proportion to their retirement assets (as of the reference date of the partial liquidation or earlier date of withdrawal), multiplied by the number of years and months during which the individual was insured with the occupational benefits fund up to the reference date of the partial liquidation or the earlier withdrawal date. The basis is the period in which savings contributions were paid to the occupational benefits fund.

## **3. Transfer of entitlements**

As a rule, the unallocated assets attributable to the withdrawing active insured persons are attributed individually. If at least 10 insured persons transfer as a group to another occupational benefits institution (group withdrawal), 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/Foundation and are not allocated individually.

## **Allocation of a shortfall (underfunding)**

Art. 10

If the calculation in accordance with section Art. 8 results in a shortfall instead of unallocated assets, the amount is applied to the withdrawing and remaining active and incapacitated insured persons. The definition of these groups of persons is the same as for the distribution of unallocated assets.

The shortfall is divided individually among the affected persons by means of the key defined in Art. 9 point 2.

The portion of the shortfall to be allocated to the withdrawing active insured persons is deducted individually from their vested benefits.

The portion of the shortfall attributable to the remaining active and incapacitated insured persons will remain with the occupational benefit fund without being individually attributed.

## **Collective entitlement to technical provisions of the occupational benefits fund**

Art. 11

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

The collective, prorated claim to any technical provisions of the occupational benefits fund applies to the insured for whom the technical provisions were formed. The collective entitlement is calculated on the same basis as is used for the current provisions.

## **Transfer of entitlement to technical provisions**

Art. 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 if the affiliation contract is partially or fully terminated**

### **Reference date of partial or total liquidation**

Art. 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 is partially or fully terminated. This does not apply to the cases mentioned in section Art. 6.

## **Calculation of unallocated assets/shortfall (underfunding)**

Art. 14

The unallocated assets are calculated in accordance with the provisions set out in Art. 8.

## **Division and transfer of unallocated assets**

Art. 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 insured persons, no distribution takes place. In this case, the unallocated assets 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, if applicable, 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 retirement 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 – if applicable – withdrawing and the remaining pensioners (on the reference date of the partial liquidation).

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; 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, including 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, the unallocated assets attributable to the withdrawing insured persons are attributed individually.

The total amount of the group of withdrawing active insured persons is broken down individually in proportion to the individual retirement assets (as at the reference date of the partial liquidation), multiplied by the number of insurance years and months (based on the time during which savings contributions were paid in the occupational benefits fund) of membership in the occupational benefits fund, up to the reference date of the partial liquidation.

The total amount of the group of withdrawing pensioners is divided individually among the individual persons (provided they are entitled in accordance with Art. 15.1) in proportion to the tenfold annual pension.

### **3. Distribution of incapacitated insured persons’ portion**

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 Art. 13).

The resulting entitlements 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 include 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.

#### **Allocation of a shortfall (underfunding)**

Art. 16

If the calculation in accordance with Art. 14 results in a shortfall instead of unallocated assets, the amount is applied to the withdrawing active insured persons.

The shortfall is divided individually among the affected persons by means of the key defined in Art. 15 point 2.

The portion of the shortfall to be allocated to the withdrawing active and incapacitated insured persons is deducted individually from their vested benefits.

#### **Collective entitlement to the technical provisions**

Art. 17

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

The collective, prorated claim to any technical provisions of the occupational benefits fund applies to the insured for whom the technical provisions were formed. The collective entitlement is calculated on the same basis as is used for the current provisions.

#### **Transfer of entitlement to the technical provisions**

Art. 18

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.

### **Resolution, information, and execution**

#### **Resolution on partial or total liquidation**

Art. 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 amount of the unallocated assets/shortfall and of the technical provisions of the occupational benefits fund, as well as the distribution plan. Such a resolution is not required for the cases mentioned in section Art. 6.

#### **Information for insured persons and pensioners**

Art. 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, 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 unallocated assets or shortfall, and 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 30 days of the information being issued. If the dispute cannot be settled amicably, the Foundation sets the persons involved a deadline of 30 days to submit the conditions, procedure, and distribution plan to the supervisory authority for review and a decision.



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 Art. 15.1.

### **Execution**

Art. 21

The distribution plan is executed once it has become legally valid. Entitlements under these regulations are due 30 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/or none of the persons involved contacted the supervisory authority within the 30-day deadline, 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 shortfall to be applied, as well as any collective share of the fluctuation reserve and the technical provisions of the Foundation, are adjusted accordingly.

If, in the event of a shortfall, the vested benefits transferred were not reduced or reduced by too little, the insured person must reimburse the excess payment.

## **Procedure in special cases**

### **Employer contribution reserves that have lost their purpose**

Art. 22

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**

Art. 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 additional cost contributions in accordance with the cost regulations.

### **Cases that do not fall under these regulations**

Art. 24

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**

Art. 25

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

### **Entry into force**

Art. 26

These regulations enter into force on January 1, 2019, and replace the version of December 1, 2016.