Pensions & Retirement Plans

In 17 jurisdictions worldwide

Contributing editors
Steven J Friedman and Melissa B Kurtzman

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GETTING THE DEAL THROUGH

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Contributing editors

Steven J Friedman and Melissa B Kurtzman
Littler Mendelson, PC

Publisher
Gideon Roberton
gideon.roberton@lbresearch.com

Subscriptions
Sophie Pallier
subscriptions@gettingthedealthrough.com

Business development managers
Alan Lee
alan.lee@lbresearch.com

Adam Sargent
adam.sargent@lbresearch.com

Dan White
dan.white@lbresearch.com

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Fax: +44 20 7229 6910

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CONTENTS

Switzerland

Martin L Müller

Pestalozzi Attorneys at Law

Statutory and regulatory framework

1 What are the main statutes and regulations relating to pensions and retirement plans?

The Swiss Federal Constitution stipulates that the Swiss pension system rests on three pillars: the Federal Old Age, Survivors' and Invalidity Insurance (first pillar), the Federal Law on the Occupational Old-age, Survivors' and Disability Benefit Plan (second pillar) and Private Pension Schemes (third pillar).

First pillar (social security): according to article 112 of the Swiss Federal Constitution, the first pillar should adequately cover basic living expenses. The Old Age and Survivors' Insurance (OASI) provides old-age pensions as well as benefits for widowers and orphans. The OASI is financed by contributions from employees and employers, from the self-employed and from the people not engaged in paid employment. The authorities also contribute, inter alia, via direct funding and VAT.

Second pillar (mandatory pension fund): according to article 113 of the Swiss Federal Constitution, the occupational pension scheme (ie, the second pillar), together with the Old Age, Survivors' and Invalidity Insurance (ie, the first pillar), enables the insured persons to maintain their previous lifestyle in an appropriate manner. The second pillar provides old age pensions, and it also covers risks by providing benefits in the case of invalidity and benefits to survivors in the case of death.

The second pillar is governed by the Federal Law on the Occupational Old Age, Survivors' and Disability Benefit Plan (LOB) and the respective ordinances. Risk insurance against disability and death is compulsory for all employees older than 17 years with an annual income exceeding 21,060 Swiss francs, and retirement insurance is compulsory for all employees older than 24 years with an annual income exceeding 21,060 Swiss francs. The second pillar is financed by both employees and employers (usually on a fifty-fifty basis), who pay their contributions into a pension fund foundation.

Under certain conditions, the second pillar can be used prior to retirement to acquire or amortise a principal home or for self- employment purposes.

Third pillar (private pension fund): the third pillar is a purely private pension scheme provided by the private sector. It is optional and financed entirely by the insured person. Contributions to the third pillar are tax privileged up to a certain amount (2014: in principle: 6,739 Swiss francs for employees who have access to a pension scheme and a maximum 33,696 Swiss francs for the self-employed), and these contributions can be deducted from the taxable income.

The following remarks are specific to the second pillar and the LOB since this Act is what is in Switzerland generally understood to be the pension fund.

2 What are the primary regulatory authorities and how do they enforce the governing laws?

Pension funds are usually run by foundations. A cantonal authority supervises the pension foundations registered with the respective authority (usually the foundations domiciled in the respective canton). The cantonal authority ensures that the foundations are in compliance with applicable law. For its assessment, the cantonal authority uses the reports of the accredited pension actuaries as well as the auditors of the pension funds. If required, the cantonal authorities can, inter alia, request more detailed information, request an expertise, overrule decisions by pension funds, sanction the bodies of the pension funds or fine the responsible persons.

The cantonal authorities are supervised by a Supervisory Commission. With regard to the Supervisory Commission, the law provides for certain independent criteria for its members. This Supervisory Commission supervises the cantonal authorities based on their annual reports.

3 What is the framework for taxation of pensions?

The employer deducts the employee's portion of the pension plan contributions from the employee's salary and pays them on behalf of the employee into the pension fund. These contributions, thus, do not constitute income for the employee. The employer deducts the employer's portion as expense. Money paid out of a pension fund is taxable as income when received. Regular pension income is subject to ordinary taxation, while extraordinary payout of the capital is taxed on a separate basis at a reduced rate.

State pension provisions

4 What is the state pension system?

The state pension system in principle consists of the OASI, and covers old age pensions as well as benefits for widowers and orphans.

There is a minimum contribution to the OASI of 480 Swiss francs a year. The contributions are not capped, but have to be paid on the total annual income.

5 How is the state pension calculated and what factors may cause the pension to be enhanced or reduced?

While the minimum retirement pension paid out under the OASI is set at 14,040 Swiss francs per year per individual, the maximum allowance is capped at 28,080 Swiss francs per year (for married couples, the allowance is capped at 150 per cent of the maximum pension for an individual.

The amount of the pension depends on the number of years the respective individual contributed to the state pension system and the amount of the contributions.

6 Is the state pension designed to provide a certain level of replacement income to workers who have worked continuously until retirement age?

Pensions out of the OASI only cover basic living expenses. The LOB seeks to achieve a certain level of income upon retirement (65 and 64 years for men and women respectively) to maintain the retiree's standard of living to the extent that is appropriate.

7 Is the state pension system under pressure to reduce benefits or otherwise change its current structure in any way on account of current fiscal realities?

Pensions from the OASI are not paid from the funds that the respective individual accumulated, but rather from the current contributions. Because of the ageing population, the state pensions system is under serious pressure, and the current estimates illustrate that the state pension system will start incurring a deficit by 2020.

The Swiss Federal Council initiated an overall reform of the OASI, aiming to implement the new law in 2020. This proposal is now being discussed in parliament. The outcome of these discussions is totally open-ended, but experience has shown that it will be very difficult to implement a reduction of benefits.

Plan features and operation

8 What are the main types of private pensions and retirement plans that are provided to a broad base of employees?

Each foundation has its own pension and retirement plan. Usually, these plans have the following characteristics:

- defined contribution (defined benefit plans are becoming rarer);
- employees and employer contribute on a fifty-fifty basis;
- they usually cover more than the compulsory minimum risk coverage (often, the full base salary is insured, namely, the contributions and benefits are calculated on that basis);
- the employee's and employer's savings contribution increase with the age of the employee (eg, 7/10/15/18 per cent);
- contributions for female employees are higher than for male employees;
- early retirement is possible after the age of 58; and
- upon retirement, the employee can opt for either a monthly pension or a lump-sum payment.

9 What restrictions or prohibitions limit an employer's ability to exclude certain employees from participation in broad-based retirement plans?

It is the foundation, and not the employer, that is responsible for the pension plan. The employer, therefore, cannot exclude an employee from participating in a retirement plan.

For the statutory minimum, the foundation cannot exclude employees as long as they meet the criteria provided for by statutory law (particularly minimum duration of employment agreement and level of annual salary).

For any pension scheme exceeding the statutory minimum, the foundation can introduce certain criteria as long as they are objective and consistent with the overall plan (eg, seniority, salary level). Further, eligibility for an excess scheme is usually subject to successfully passing a medical exam.

10 Can plans require employees to work for a specified period to participate in the plan or become vested in benefits they have accrued?

For the statutory minimum, the plan cannot require anything more than the requirements of statutory law (eg, minimum annual salary).

With respect to pension benefits exceeding the mandatory minimum, the scheme could require a minimum duration of the employment relationship (however, such requirement would definitively not be standard in Switzerland). There is no requirement for a minimum period of employment for an employee to claim accrued benefits.

11 What are the considerations regarding employees working permanently and temporarily overseas? Are they eligible to join or remain in a plan regulated in your jurisdiction?

As a general rule, employees who are working abroad are not included in the Swiss social security and pension system.

However, as an exception, employees are able to remain in the OASI for a period of up to six years. It is important to note that the bilateral treaty between Switzerland and the EU as well as the individual agreements between Switzerland and the relevant jurisdictions might have certain restrictions.

Employees who are temporarily working abroad (less than five to six years) but remain employed by a Swiss employer may remain in the pension plan, provided that the pension plan allows this and the national laws where the employee is working do not require a local pension plan.

12 Do em

19 Is the sufficiency of retirement benefits affected greatly if employees change employer while they are accruing benefits?

Employees leaving their old employment and starting a new job are, as a general rule, entitled to the full amount of their accrued pension benefits. Upon termination, the pension plan of the old employer will transfer these benefits to the pension plan of the new employer.

In the extraordinary situation of a partial liquidation of a pension plan following the termination of several employees, it might be that the exiting employees will not get their full accrued pension benefits. In a partial liquidation, the pension plan gets liquidated with respect to the leaving employees and they receive their respective proportion in the current pension assets. The pension plan defines the number of employees leaving the plan, simultaneously triggering a partial liquidation. The preconditions and the proceedings that apply to partial liquidation must be approved by the supervisory authority.

In the case of an under-funding, the exiting employees will be credited with a proportionally reduced accrued pension amount (ie, their accrued pension benefits are reduced in line with the underfunding). On the other hand, the exiting employees also participate, to a certain extent, if the plan has a surplus of funding.

20 In what circumstances may members transfer their benefits to another pension scheme?

Members cannot transfer their benefits to another pension scheme as long as they remain with the same employer. Only in the case of a change of employer will the pension fund of the old employer transfer the accrued funds to the pension scheme of the new employer.

21 Who is responsible for the investment of plan funds and the sufficiency of investment returns?

The trustees of the pension plan foundation are responsible for the investment of the pension plan assets and the sufficiency of the returns. Statutory law defines asset classes in which a pension fund can invest. Investments in a certain category of assets as well as in a certain obligor are limited. Investments in the employer must in principle be secured; if there is no security, investments in the employer may only be made in the case where the funds of the investment scheme exceed the liabilities against the beneficiaries. Within this framework, the pension plan trustees are free to decide its asset allocation.

Should a pension fund not generate sufficient returns, the fund will become deficient in its funds. In this case, the pension plan trustees have to implement measures that will improve the funding level.

22 Can plan benefits be enhanced for certain groups of employees in connection with a voluntary or involuntary reduction in workforce programme?

Introducing better plan benefits in connection with a voluntary or involuntary reduction in workforce would be rather difficult, as these proposed benefits must be financed, otherwise the pension fund will most probably become underfunded. That is why this is generally not done in Switzerland. However, what is sometimes seen, most often in a social plan, is that the employer commits to provide certain funding to the pension plan for employees who are forced into early retirement.

23 Are non-broad based (eg, executive-only) plans permitted and what types of benefits do they typically provide?

Yes, non-broad based plans are permitted and ubiquitous in Switzerland. These plans provide for benefits that exceed the compulsory requirement of statutory law. Typical benefits are higher pension payments or better insurance coverage.

24 How do the legal requirements for non-broad based plans differ from the requirements that apply to broad-based plans?

Usually, non-broad based plans provide for non-compulsory benefits. Accordingly, the statutory minimum requirements do not apply to them. In particular, under these plans, there is no guaranteed interest, and the conversion rate for the calculation of the pension is lower.

25 How do retirement benefits provided to employees in a trade union differ from those provided to non-unionised employees?

There is no such distinction under Swiss law. The statutory minimum must be respected with regard to all employees. Further, plan benefits have to be offered on a consistent basis, whereby a plan can provide for different benefits for different classes of employees as long as there are objective criteria among these employee classes. The unionisation of an employee is not an objective criterion.

26 How do the legal requirements for trade-union-sponsored arrangements differ from the requirements that apply to other broad-based arrangements?

In Switzerland, trade unions do not sponsor any pension plan. It should be noted that some collective bargaining agreements may provide for requirements regarding pension plans, but the financing obligations remain on the employer and the employee, and the trade union is not involved.

Enforcement

27 What is the process for plan regulators to examine a plan for periodic legal compliance?

Plan regulators examine a plan on a yearly basis. The plan has to submit an auditor's report and the report by the accredited pension actuary to the regulator.

28 What sanctions will employers face if plans are not legally compliant?

The trustees of the pension plan foundation are ultimately personally responsible for the compliance with the applicable law (in particular, investing of the pension funds in accordance with the statutory investment guidelines).

The supervisory authority can give instructions and overrule decisions made by the trustees of the pension plan foundation and order further measures provided for by statutory law. Finally, the supervisory authority can also fine the pension plan trustees for non-compliance with their duties.

29 How can employers correct errors in plan documentation or administration in advance of a review by governing agencies?

The competent authorities review all plan documentation and sign off on them prior to their implementation.

30 What disclosures must be provided to the authorities in connection with plan administration?

The plan administration must provide the authorities with information that allows the supervisory authority to verify compliance with statutory law and the regulations of the plan. The information includes, in particular, the annual report and the report by the accredited pension actuary as well as the auditor's report.

In addition, the authorities can also request further documents and information from the trustees of the pension plan foundation, as well as the plan's accredited pension actuary or the auditor.

31 What disclosures must be provided to plan participants?

The plan participants are entitled to the following information: details of the plan entitlements (insurance coverage and saving quotas), accrued funds, premiums, organisation and financial status of the plan, as well as the identity of the trustees of the pension plan foundation. Usually, the plan submits this information to the employees at the beginning of the year in writing on an individual basis (ie, employees only get the information with respect to their own pension plan situation, but not on other employees). Further, the plan participants can also request a copy of the annual accounts and the annual report of the plan.

32 What means are available to plan participants to enforce their rights under pension and retirement plans?

With respect to the second pillar concerning the relationship between pension fund, employer and the plan participant, a simplified procedure applies that is usually with cost to the plan participant. The facts of case are established ex officio.

Plan changes and termination

33 What restrictions and requirements exist with respect to an employer's changing the terms of a plan?

The employer cannot change the plan. It is the pension plan trustees who change the terms of the plan, subject to the mandatory minimum. The pension plan trustees consist of employer's representatives and employees' representatives. The pension plan regulations usually provide for a procedure to be complied with for the implementation of new terms.

34 What restrictions and requirements exist with respect to an employer terminating a plan?

Termination is only possible for employees (and not retirees) and for plan entitlements exceeding the mandatory minimum. The pension plan trustees have to agree on the termination, and then notify the employees on the termination of the non-mandatory parts of the pension scheme.

35 What protections are in place for plan benefits in the event of employer insolvency?

As a pension plan is independent from the employer, the insolvency of the employer does not damage the plan (unless the plan is a creditor of the employer, for example, because of unpaid contributions or the pension plan having granted a loan to the employer (the granting of loans is only possible under very restrictive rules)).

36 How are retirement benefits affected if the employer is acquired?

Again, the pension plan is independent from the employer. The acquisition of the employer by a share deal does not have any effect on the pension plan. If, however, the employer is acquired by an asset deal, the employees will terminate their employment with the seller and transfer to the buyer. This transfer will result in the exit of the seller's pension plan (which typically goes together with a partial liquidation of seller's pension plan (see question 19)) and the entry into the buyer's pension plan.

37 Upon plan termination, how can any surplus amounts be utilised?

The surplus will have to be used for the entitlements of retired employees.

Fiduciary responsibilities

38 Which persons and entities are 'fiduciaries'?

The trustees of the pension plan foundation and the management of the funds are typically considered fiduciaries. The employer's representatives and employees' representatives are equally represented in the board of trustees of the pension plan.

39 What duties apply to fiduciaries?

A fiduciary must act in the best interest of the insured. This becomes particularly vital where the employer requests certain actions that would benefit the employer. The fiduciaries have some (quite limited) discretion in this respect. Given that the action of the fiduciaries is considered a commercial activity under official licence, they are liable also for minor negligence.

40 What are the consequences of fiduciaries' failing to discharge their duties?

Fiduciaries may become personally liable for their failures and omissions and would be required to pay compensation, even with regard to cases pertaining to minor negligence.

Legal developments and trends

41 Have there been legal challenges when certain types of plans are converted to different types of plan?

As the conversion of a plan (like any other amendment) needs the prior approval by the supervisory authority, there are no legal challenges.

42 Have there been legal challenges to other aspects of plan design and administration?

There has been some legal action regarding the liability of the trustees of the pension plan foundation (ie, the administration) arguing that they did not act in the interest of the insured has been witnessed. Over the last decade, rules on liability have become rather strict and requirements for the trustees of the pension plan foundation have increased.

43 How will funding shortfalls, changing worker demographics and future legislation likely affect private pensions in the future?

After the financial crises, a lot of pension plans went into underfunding owing to the poor performance of stocks. The funding situation of various pension plans has now considerably improved, but the pension foundations are still struggling to generate sufficient returns.

The Swiss Federal Council submitted in November 2013 a new preliminary draft legislation on social security and pension plans to the Parliament including:

- increase of the retirement age for women to 65 (ie, the retirement age of men);
- increase minimum age for early retirement from 58 to 62;
- reduction of pension plan interest rate; and
- increase legal quote for life insurance companies.

The possible changes are highly controversial and are much debated. It is unclear what the outcome of the discussions will be. In any event, one expects that the various interest groups will fiercely oppose any corrections, and it will ultimately be the people who will have to decide by popular vote on this matter.

PESTALOZZI
ATTORNEYS AT LAW

Martin L Müller **martin.mueller@pestalozzilaw.com**

Loewenstrasse 1
8001 Zurich
Switzerland

Tel: +41 44 217 91 11
Fax: +41 44 217 92 17
www.pestalozzilaw.com

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