

PANORAMIC PENSIONS & RETIREMENT PLANS 2024

Contributing Editor

Penny Cogher

Irwin Mitchell LLP



LEXOLOGY

Pensions & Retirement Plans 2024

Contributing Editor

Penny Cogher

Irwin Mitchell LLP

Quick reference guide enabling side-by-side comparison of local insights, including into the statutory and regulatory framework; state pension provision; occupational pension schemes; compliance and enforcement; plan changes and termination; fiduciary responsibilities; legal challenges; future prospects; and current hot topics.

Generated on: March 11, 2024

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. Copyright 2006 - 2024 Law Business Research

Contents

Introduction

Penny Cogher

Irwin Mitchell LLP

Brazil

Cristiane Ianagui Matsumoto, Lucas Barbosa Oliveira

Pinheiro Neto Advogados

France

Pascale Ernst

Ogletree Deakins France

Netherlands

Eric Bergamin, Bas Dieleman

Eversheds Sutherland (International) LLP

Portugal

André Pestana Nascimento, Liliana Silveira de Freitas

Uría Menéndez

Switzerland

Tabea Gutmann, Kathryn Kruglak, Rayan Houdrouge, Irène Suter-Sieber

Walder Wyss Ltd

United Kingdom

Penny Cogher

Irwin Mitchell LLP

USA

David A. Guadagnoli, Amy E. Sheridan

Sullivan & Worcester LLP

Introduction

[Penny Cogher](#)

[Irwin Mitchell LLP](#)

This is a busy time for pensions.

The UK government remains committed to its pension tax changes, including the abolition of the lifetime allowance from 6 April 2024 and a reduction in the tax charge on a refund of surplus from 35 per cent to 25 per cent. This may result in more disputes about the use of surplus as more plans experience an improved funding position. The legal position over the use of surplus is complex as considerations include the plan's rules, whether the plan is going to secure benefits or run on, and balancing the interests of the employer(s) and plan members.

The government also continues to develop its Mansion House reforms. There is ongoing consultation regarding the concept of a defined contribution (DC) pension pot for life and background work on the consolidation of small deferred DC pots, trustee duties in the DC decumulation phase, the expansion of collective DC schemes and a value-for-money framework. The government also intends to introduce a permanent superfund regime "as soon as possible". Facilitating employer access to surplus in ongoing plans is also on the government's agenda, as is facilitating further investment in productive finance. These reforms are broadly supported by the Labour party, so there should be broad continuity in pensions even if there is a change of government.

The hugely important Occupational Pension Schemes (Funding and Investment Strategy and Amendment) Regulations 2024 have been published (in draft on 29 January 2024) and become law on 6 April 2024. These apply to valuations with effective dates on or after 22 September 2024. Defined benefit (DB) plans then have 15 months from their valuation's effective date to comply. The new regime, which has been developed over several years, is designed to protect plan members for the long-term. In the meantime, the government has somewhat revised its overall pension policy and is now focusing on how DB plans can use their assets more flexibly. This is not entirely consistent with the initial basis of these regulations – that trustees and employers should take on less risk as plans mature. The government has also revised the draft regulations to include more scheme-specific flexibilities as to how the maturity of a scheme is to be measured and to confirm that investment in the sustainable growth of sponsoring employers' businesses is a matter to consider alongside what is affordable as regards funding the plan. Because of these changes, The Pensions Regulator is to reconsider its fast-track parameters for this new funding regime.

Finally, the draft regulations introduce or give specific legal meanings to terms and concepts such as the *strength of the employer covenant* and how it is assessed, together with *code*, *journey plan*, *professional trustee body*, how scheme maturity is measured, what *low dependency investment allocation* and *low dependency funding basis* mean, what an *actuarial estimate* is, and what the new statement of strategy is that has to be signed and sent to the Pensions Regulator "as soon as reasonably practicable". It also prescribes that "The assets of the scheme must be invested in investments with sufficient liquidity to enable

the scheme to meet expected cash flow requirements and make reasonable allowance for unexpected cash flow requirements” and deals to a certain extent with plans that have surplus.

Separately, The Pension Regulator’s long-awaited general code is due to come into force on 27 March 2024. This code consolidates and updates 10 existing codes of practice into a single set of clear, consistent expectations on scheme governance and administration, for occupational, personal and public service pension schemes.

The current codes of practice on notifiable events, funding defined benefits, modification of subsisting rights, the material detriment test, the authorisation and supervision of master trusts and collective defined contribution schemes remain outside the general code and continue to apply.

The general code has five sections covering governance, funding and investment, administration, communications and disclosure and reporting to The Pensions Regulator. There is a greater emphasis on documented policies and procedures, a requirement to consider climate change, a stronger reference to equality, diversity and inclusion on governing bodies and a new requirement to undertake and document an own risk assessment (ORA) for schemes with more than 100 members.

Compliance, and evidencing it, is now more important than ever, not least because The Pensions Regulator may consider failure to complete an ORA indicates poor scheme governance, which could lead to greater scrutiny going forwards.

There have also been changes with the Pension Protection Fund, which announced in February 2024 that it has partnered with a DC master trust so it can provide an investment vehicle for DC funds that are within DB plans rescued by the Pension Protection Fund.

Companies House has announced that it intends to change company law no earlier than 4 March 2024 under the Economic Crime and Corporate Transparency Act 2023 (ECCTA 2023), some of which will affect corporate trustees. Companies House will be able to verify the identities of company directors, remove fraudulent organisations from the company register and share information with criminal investigation agencies.

We have also seen significant clarifications in pensions law from the law courts. In *Avon Cosmetics Ltd v Dalriada Trustees Ltd* issued on 17 January 2024, the High Court considered a *Re Courage*-type restriction in the power of amendment of a defined benefit plan. The restriction protected members against adverse amendments to “rights accrued or secured up to the date on which the amendment was made”. The employer sought to remove members’ entitlement to a final salary link, but the judge decided the amendment would only be valid for those members whose benefits would be improved by it and that the amendment would be invalid for those members who had lost out from the amendment. These latter members had an “underpin” applied when calculating their benefits. The judgment also considers whether, when the scheme amendments were made, the individuals had properly appreciated the true limits on their powers and would have exercised them in the same way if they had known those limits.

In the case of *Newell Trustees Limited v Newell Rubbermaid UK Services Ltd* and another issued on 23 January 2024, the High Court upheld the validity of converting member benefits from a final salary DB basis to a money purchase DC basis following the transfer of

members' benefits to a new defined contribution section, and the nature of the final salary underpin that should be applied.

The judgment covers a range of issues around the transfer and conversion process, and alleged age discrimination issues relating to the way members were selected for that process: members under the age of 40 were automatically transferred; members aged 40–44 were given the option to stay or to transfer and members over the age of 45 stayed in the DB section. The amendments were made by the combination of a 1992 deed and booklets pending the execution of a definitive amending deed in 1993.

The court ruled the 1992 deed was effective to set up the new section and transfer relevant members into it. Further, had it not been effective, the 1993 deed would have achieved the same effect retrospectively, subject to issues about the restrictive amendment power.

The plan's amendment power specified that no alteration could be made "such as would prejudice or impair the benefits accrued in respect of membership up to that time". The judge decided this allowed the conversion of DB benefits to DC benefits, but it did not permit the final pensionable salary link to be broken for members transferring to the DC section.

Given the amendments were made in 1992, and so pre-dated the current age discrimination laws, the claims relating to age discrimination and how the membership had been divided into age groups that were subjected to different treatment were dismissed.

The judgment also provides helpful commentary on questions around member consent and the validity of extrinsic contracts in relation to plan amendments.



[Penny Cogher](#)

penny.cogher@irwinmitchell.com

[Irwin Mitchell LLP](#)

[Read more from this firm on Lexology](#)

Switzerland

[Tabea Gutmann](#), [Kathryn Kruglak](#), [Rayan Houdrouge](#), [Irène Suter-Sieber](#)

[Walder Wyss Ltd](#)

Summary

STATUTORY AND REGULATORY FRAMEWORK

- Primary laws and regulations
- Regulatory authorities
- Pension taxation

STATE PENSION PROVISIONS

- Framework
- Pension calculation
- Aims
- Current fiscal climate

OCCUPATIONAL PENSION SCHEMES

- Types
- Restrictions
- Overseas employees
- Funding
- Level of benefits
- Pension escalation
- Death benefits
- Retirement
- Early distribution and loans
- Change of employer or pension scheme
- Investment management
- Reduction in force
- Executive-only plans
- Unionised employees

ENFORCEMENT

- Examination for compliance
- Penalties
- Rectification
- Disclosure obligations
- Enforcement mechanisms

PLAN CHANGES AND TERMINATION

- Rules and restrictions
- Insolvency protection
- Business transfer
- Surplus

FIDUCIARY RESPONSIBILITIES

- Applicable fiduciaries
- Fiduciary duties
- Breach of duties

LEGAL DEVELOPMENTS AND TRENDS

- Legal challenges
- Future prospects

UPDATE AND TRENDS

- Hot topics

STATUTORY AND REGULATORY FRAMEWORK

Primary laws and regulations

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

The Swiss social security system is founded on a three-pillar model.

The first pillar is the state pension (similar to social security in the United States) and includes old-age and survivors' insurance (OASI), disability insurance and loss of earnings insurance.

The primary legal bases covering OASI are the:

- [Swiss federal act on old-age and survivors' insurance of 20 December 1946, RS 831.10](#); and
- [Old-age and survivors' insurance regulation of 31 October 1947, RS 831.101](#).

The second pillar is the occupational pension scheme. The primary legal bases covering the second pillar are the:

- [Swiss federal act on old-age, survivors' and disability occupational pension schemes of 25 June 1982, RS 831.40](#)
- [Swiss federal act on vesting in old-age, survivors' and disability occupational pension schemes of 17 December 1993, RS 831.42](#) ;
- [Vesting in old-age, survivors' and disability occupational pension schemes regulation of 3 October 1994, RS 831.425](#) ;
- [Supervision of old-age, survivors' and disability occupational pension schemes regulation of 22 June 2011, RS 831.435.1](#);
- [Old-age, survivors' and disability occupational pension schemes regulation of 18 April 1984, RS 831.441.1](#); and
- [Tax deductibility of contributions to recognised forms of old-age, survivors' and disability occupational pension schemes regulation of 13 November 1985, RS 831.461.3](#).

The third pillar is the private pension plan. Its purpose is to cover additional, personal needs. The third pillar is outside of the scope of this article and, therefore, will not be discussed further.

Additionally, the following legal bases are important across all three pillars:

- [Swiss federal act on the general part of social security law of 6 October 2000, RS 830.1](#); and
- [General part of social security law regulation of 11 September 2002, RS 830.11](#).

Moreover, the following European Union (EU) legal bases are important with regard to Switzerland's cooperation with the EU, as they also apply to European Free Trade Association (EFTA) states, including Switzerland:

- [Regulation \(EC\) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems](#); and
- [Regulation \(EC\) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation \(EC\) No. 883/2004 on the coordination of social security systems](#).

Switzerland also concluded a number of multilateral and bilateral [social security conventions](#).

Law stated - 31 January 2024

Regulatory authorities

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

It should be noted that Switzerland is a federal state with three levels of government – communal (municipal), cantonal and federal.

Concerning the first pillar, the primary regulatory authorities are the cantonal authorities at the competent Cantonal Compensation Fund Office. These authorities are responsible for issuing decisions with regard to most aspects of state pension laws and regulations, including who is subject to making state pension contributions, the contribution amounts and the payment of state pension benefits. The subject of a decision may object and request that the authority review its decision. This decision then can be appealed to the competent courts.

That said, in some cases, other compensation fund offices may be competent for making such decisions. In particular, professional associations may have their own compensation fund office. In that case, in principle, members of the professional association would be affiliated with that compensation fund office, rather than with the Cantonal Compensation Fund Office.

Moreover, there is a federal compensation fund, which mainly is responsible for federal employees.

The federal authority is the Federal Social Insurance Office (FSIO). The FSIO's primary role with regard to the regulation of state pensions is to act as the supervisory authority. In particular, the FSIO can step in to issue a decision when the cantons do not agree whose Cantonal Compensation Fund Office is competent.

Concerning the second pillar, the primary regulatory authorities are the occupational pension funds themselves. These funds must be listed in a register of occupational pension funds. Each canton designates a supervisory authority tasked with monitoring the occupational pension funds in that canton.

There is also a federal Substitute Occupational Benefit Institution. This fund is primarily responsible for individuals whose employer did not meet their statutory obligations concerning occupational benefits, as well as individuals wishing to be affiliated on a voluntary basis.

These authorities are responsible for issuing decisions with regard to most aspects of occupational benefit scheme laws and regulations, including who is subject to making occupational pension contributions, the contribution amounts and the payment of occupational pension benefits. The subject of a decision may object and request that the authority review its decision. This decision then can be appealed to the competent courts.

The FSIO also acts as the federal supervisory authority regarding occupational pension funds.

Law stated - 31 January 2024

Pension taxation

3 | What is the framework for taxation of pensions?

Contributions made to compensation funds and occupational pension funds, in principle, are deducted from an individual's taxable income.

Employers also may deduct contributions they make from their taxable revenue.

As a general rule, both state pension and occupational benefit pension payments are considered income subject to Swiss income tax.

In addition, cantonal tax laws often exonerate pension capital from wealth tax (a cantonal and communal tax).

Law stated - 31 January 2024

STATE PENSION PROVISIONS

Framework

4 | What is the state pension system?

The state pension system (first pillar) includes old-age and survivors' insurance, disability insurance and loss of earnings insurance.

Law stated - 31 January 2024

Pension calculation

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

State pensions are calculated based on an individual's average annual income and the number of years of contributions. Bonuses also are included for time spent raising children and caring for family members. As there are 43 years in which women could have contributed to their state pension and 44 years in which men could have contributed to their state pension, a reduction of 1/43, or respectively 1/44, is applied for each missing year.

Law stated - 31 January 2024

Aims

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

The purpose of the state pension system is to cover vital subsistence needs.

Law stated - 31 January 2024

Current fiscal climate

- 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?

Yes.

One example of this is the recent decision to raise the retirement age for women. The current retirement age in Switzerland is 64 for women and 65 for men. In September 2022, the Swiss population voted to raise the retirement age for women to 65. The new dispositions entered into force on 1 January 2024, with the age being increased incrementally from 1 January 2025.

Moreover, the Swiss population also voted to increase the VAT rate to better fund the state pension system. This change entered into force on 1 January 2024; the ordinary VAT rate increased from 7.7 per cent to 8.1 per cent, the reduced VAT rate (applicable to certain essential items) increased from 2.5 per cent to 2.6 per cent and the special VAT rate for accommodation increased from 3.7 per cent to 3.8 per cent.

Law stated - 31 January 2024

OCCUPATIONAL PENSION SCHEMES

Types

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

The specificities of the occupational pension plan will depend on the specific occupational pension fund's regulations. For instance, some offer a lump-sum payment at retirement, while others pay a monthly pension and others still combine a smaller lump-sum payment with a monthly pension. Moreover, both defined benefit plans and defined contribution plans exist, although defined contribution plans are more common.

Further, there are two main categories of occupational pension schemes: (1) mandatory, and (2) voluntary (extra-mandatory):

1. employees over the age of 17, whose salaries exceed a certain minimum (22,050 francs for 2024) must be affiliated with an occupational pension fund; under a mandatory occupational pension scheme, salaries between 25,725 francs and 88,200 francs are insured (for 2024); and
2. employers may decide for their employees to also be affiliated with a voluntary occupational pension scheme to insure salary above this threshold; the maximum salary that can be insured with a voluntary occupational pension scheme is 882,000 francs (for 2024).

Self-employed individuals also may choose to be affiliated with a voluntary occupational pension scheme.

Law stated - 31 January 2024

Restrictions

- 9 | Are employers required to arrange or contribute to supplementary pension schemes for employees? What restrictions or prohibitions limit an employer's ability to exclude certain employees from participation in broad-based retirement plans?

Employers only are required to make contributions with regard to the mandatory occupational pension scheme. They must support at least half of the contributions.

Moreover, employers also offering voluntary occupational pension schemes may choose to limit participation in these plans to employees meeting certain conditions, provided these conditions are objective (eg, salary or position). However, employers still must cover at least half of the contributions for any voluntary occupational pension scheme with which their employees are affiliated.

Law stated - 31 January 2024

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

With regard to mandatory occupational pension schemes, employees whose employment contracts are for a duration of three months or more (or who, in reality, will work for three months or more) must be affiliated with a mandatory occupational pension scheme. This often is the case for voluntary occupational pension schemes as well, but a fund's

regulations may specify otherwise. However, beyond these limits, there is no requirement for employees to work for a certain period of time to participate in the plan or become vested in benefits.

Law stated - 31 January 2024

Overseas employees

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?

A distinction should be made between (1) employees coming under the scope of Regulation (EC) No. 883/2004, (2) employees coming under the scope of another social security convention and (3) all other employees.

The following rules apply with regard to employees coming under the scope of Regulation (EC) No. 883/2004 (ie, EU citizens, European Free Trade Association (EFTA) citizens, refugees residing in an EU or EFTA State and stateless persons residing in an EU or EFTA State), as well as British citizens (including refugees and stateless persons residing in the United Kingdom), as similar rules exist under the [UK/Switzerland convention on social security coordination](#).

Posted workers' (temporarily overseas) affiliation with the Swiss social security system, including occupational pension schemes, may be maintained if the following conditions are fulfilled:

- the employee was affiliated with the Swiss social security system for at least one month prior to being posted;
- it is not anticipated that the posting will last more than 24 months (it may be possible to request a longer period of time of up to six years); and
- the individual has not been posted to replace another person.

For other overseas workers (long-term), assuming no other provisions of an international convention apply, affiliation with the Swiss social security system (including occupational pension schemes) may be maintained if:

- the employee is working overseas for a Swiss employer (who supports the employee's salary);
- that employer agrees to maintain the employee's affiliation; and
- the employee was affiliated with the Swiss social security system for at least five years immediately prior to going abroad.

Special rules also apply under Regulation (EC) No. 883/2004 with regard to cross-border workers (ie, individuals working in Switzerland, but resident in another EU or EFTA State). In this case, those individuals are affiliated with the Swiss social security system, provided they do not carry out 25 per cent or more of their employment activity from their country of residence (eg, remote working).

An exception exists. From 1 July 2023, cross-border employees coming under the scope of Regulation 883/2004 may carry out up to 50 per cent (ie, no more than 49.9 per cent) of their employment activity by remote working in their state of residence, provided both the (i) state in which their employer is located, and (ii) their state of residence have signed the new Framework Agreement on the application of Article 16 (1) of Regulation (EC) No. 883/2004 in cases of habitual cross-border telework (the Framework Agreement). Switzerland is a signatory to the Framework Agreement.

Moreover, it should be noted that the 'no-impact position' adopted by the EU Administrative Commission for the Coordination of Social Security Systems (with effect in Switzerland) during the covid-19 pandemic expired on 30 June 2023.

With regard to employees coming under the scope of another social security convention, the possibility of remaining affiliated with the Swiss social security system, including occupational pension schemes, may depend on the content of the specific convention. Assuming no other provisions of an international convention apply, affiliation with the Swiss social security system (including mandatory occupational pension schemes) may be maintained if: the employee is working overseas for a Swiss employer (who supports the employee's salary); that employer agrees to maintain the employee's affiliation; and the employee was affiliated with the Swiss social security system for at least five years immediately prior to going abroad.

For other employees, affiliation with the Swiss social security system, including occupational pension schemes, may be maintained if: the employee is working overseas for a Swiss employer (who supports the employee's salary); that employer agrees to maintain the employee's affiliation; and the employee was affiliated with the Swiss social security system for at least five years immediately prior to going abroad.

That said, in some cases, the possibility of remaining affiliated with an occupational pension scheme may also vary according to the occupational pension fund's regulations.

Law stated - 31 January 2024

Funding

12 | Do employers and employees share in the financing of the benefits and are the benefits funded in a trust or other secure vehicle?

Employers and employees share in the financing of occupational pension scheme benefits. The total employer contributions (for all employees) must equal at least the total employee contributions (made by all employees).

Occupational pension funds are legal entities, separate from the employer. They may take the form of either a foundation or an institution established by public law (and having legal personality). The funds must be structured in accordance with the Occupational Pension Scheme Act and its regulations.

Law stated - 31 January 2024

13 |

What rules apply to the level at which benefits are funded and what is the process for an employer to determine how much to fund a defined benefit pension plan annually?

It should be noted that in Switzerland, the question of benefits funding relates to the occupational pension fund itself, rather than the employer.

The Occupational Pension Scheme Act stipulates that occupational pension funds must ensure that their liabilities are covered fully. Several exceptions exist:

- a short-term overdraft is permitted if the occupational pension fund:
- still will be able to provide all benefits as soon as they become due;
- takes measures to eliminate the shortfall; and
- informs the supervisory authority, employer, insured individuals and pension beneficiaries of the shortfall; or
- certain occupational pension funds that are organised as public corporations and are guaranteed by the state.

With regard to the evaluation of assets and liabilities, the Occupational Pension Scheme Regulation stipulates, in particular, that they must be evaluated in accordance with Swiss GAAP RPC 26 rules.

It also should be noted that the occupational pension fund's debts are not considered to be the employer's debts. Therefore, the employer's liability would be limited to contributions due under the occupational pension plan, which may include a special recapitalisation contribution.

Law stated - 31 January 2024

Level of benefits

14 | What are customary levels of benefits provided to employees participating in private plans?

The purpose of the occupational pension scheme is to provide benefits that allow individuals to maintain their standard of living after retirement (ie, approximately 60 per cent of their pre-retirement income).

The precise benefits received will depend on a number of factors, including the individual's salary, the number of years during which they made contributions and whether contributions also were made to a voluntary occupational pension scheme.

Law stated - 31 January 2024

Pension escalation

15 | Are there statutory provisions for the increase of pensions in payment and the revaluation of deferred pensions?

The occupational pension fund regulations may allow for an up to five-year deferral of pension benefits after reaching the statutory retirement age, if the insured individual still is carrying out their gainful activity. In this case, pension payments will be increased.

Law stated - 31 January 2024

Death benefits

16 | What pre-retirement death benefits are customarily provided to employees' beneficiaries and are there any mandatory rules with respect to death benefits?

Under the Occupational Pension Scheme Act, provided certain conditions are met (eg, the deceased being insured at the time of their death or onset of their incapacity to work leading to their death), the following death benefits are mandatory:

- death benefits to the surviving spouse; and
- death benefits to any children.

With regard to mandatory occupational pension schemes, death benefits are due to the surviving spouse if that individual (1) is at least 45 and the marriage lasted at least five years, or (2) they are responsible for at least one child. In this case the surviving spouse has a right to 60 per cent of the disability pension that the deceased would have received until their own death or until they remarry. If the aforementioned conditions are not fulfilled, the surviving spouse receives a lump-sum payment equalling three annual pensions.

With regard to mandatory occupational pension schemes, the deceased's children have a right to 20 per cent of the disability pension that the deceased would have received until they turn 18 (or 25 if still a student or if they have a disability).

The occupational pension fund regulations may provide for the following individuals to receive death benefits:

- dependants of the deceased or the deceased's partner with whom they lived with continuously during the five years prior to their death or who was jointly responsible for a child with the deceased;
- in absence of the above, children of the deceased not fulfilling the conditions mentioned above, the parents of the deceased and the deceased's siblings;
- in absence of the above, other statutory heirs of the deceased (besides public officials), to a limit of contributions paid by the deceased or 50 per cent of the deceased's pension capital.

Law stated - 31 January 2024

Retirement

17 | When can employees retire and receive their full plan benefits? How does early retirement affect benefit calculations?

Currently, the retirement age in Switzerland is 64 for women and 65 for men. However, this is in the process of changing, following a vote by the Swiss population in September 2022; from 1 January 2025, there will be a staggered increase in the retirement age for women to 65.

The occupational pension fund's regulations may provide for early retirement from the age of 58. In this case, the pension amount will be reduced.

Law stated - 31 January 2024

Early distribution and loans

18 | Are plans permitted to allow distributions or loans of all or some of the plan benefits to members that are still employed?

As a general rule, distributions and loans are not permitted in this case. There are three exceptions to this rule:

- Up to three years prior to retirement age, withdrawals may be made to finance the purchase of residential real estate. This amount is equal to up to the entirety of the vested benefits; however, this amount is reduced after the age of 50. In some cases, the vested benefits also may be used as collateral in the context of purchasing residential real estate.
- Under certain conditions, and within certain deadlines, an early withdrawal is possible in the event of self-employment.
- Moreover, vested benefits may be withdrawn in the form of a cash payment if the covered individual leaves Switzerland for a non-EU or EFTA state, or otherwise ceases to come under the scope of mandatory occupational pension schemes.

Also, it should be noted that when an individual reaches retirement age, retirement benefits ordinarily start to be paid out, even if that individual still is employed. That said, the occupational pension fund's regulations may allow benefits to be postponed until the age of 70.

Law stated - 31 January 2024

Change of employer or pension scheme

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

When changing employers, the covered individual receives a payment of their vested benefits that must be transferred to the occupational pension fund with which their new employer is affiliated.

That said, as occupational pensions plans can differ from one employer to another (based on the plan with which the employer is affiliated), retirement benefits can be affected by a change in employers.

Law stated - 31 January 2024

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

Employees may not choose their occupational pension scheme; they automatically are affiliated with the occupational pension fund with which their employer is affiliated.

In that context, an employee's occupational pension scheme affiliation will change (1) if they change employers, or (2) if their employer changes the occupational pension scheme with which it is affiliated (however, the latter is subject to the agreement of the employees or employee representatives).

Also, if an employee ceases to be affiliated with an occupational pension scheme (eg, due to unemployment or a sabbatical), their vested benefits can be transferred to a vested benefits foundation or account. That individual may choose the vested benefits foundation or account to which their vested benefits will be transferred.

Law stated - 31 January 2024

Investment management

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

The supreme body of the occupational pension fund is responsible for the occupational pension fund's investment strategy. The employer and employees are represented equally in the supreme body.

In the case of insufficient funds, the supreme body, as well as the pension expert and auditor, may bear legal responsibility.

Further, investment foundations may be created in order to serve the investment needs of occupational pension funds.

The Occupational Pension Scheme Act and its regulations set out a certain number of conditions regarding the asset classes in which occupational pension funds may invest, and the percentage of funds that may be invested in the respective asset classes.

Law stated - 31 January 2024

Reduction in force

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

Such possibilities may be provided for in Switzerland.

Common enhancements include giving employees bridging pensions to cover them until they reach retirement age (early retirement age or normal retirement age) and making direct contributions to their pension capital. The exact specificities of measures taken may depend on what is allowed under the occupational pension fund's regulations.

Such measures are often provided for in a company social plan. Social plans may be enacted unilaterally by the employer, although in some instances they must be negotiated with, and agreed to by, the employees or employee representatives (ie, if certain thresholds are met in the event of mass redundancies). In this context, it is common to have special measures in place for older employees (ie, employees over the age of 55 or 58).

Moreover, the Occupational Pension Scheme Act contains special measures allowing employees over 58 (or 55, if allowed by the occupational pension fund's regulations) to keep their occupational pension affiliation if they are laid off.

Law stated - 31 January 2024

Executive-only plans

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

Non-broad based plans are permitted, provided membership is based on objective criteria and that they are offered to everyone meeting these objective criteria (eg executive level). Typically, these are voluntary occupational pension schemes that insure salaries above the threshold covered under a mandatory occupational pension scheme.

Law stated - 31 January 2024

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

In general, voluntary occupational pension schemes may differ somewhat from mandatory occupational pension schemes, in particular regarding contribution amounts and the amount of salary insured. The precise conditions will depend on the occupational pension fund's regulations.

Law stated - 31 January 2024

Unionised employees

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

There are no special occupational pension or retirement benefits provided to employees in trade unions.

Law stated - 31 January 2024

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

In Switzerland, it is the employers, rather than the trade unions, who affiliate employees with occupational pension funds and there are not specific trade-union sponsored arrangements.

Law stated - 31 January 2024

ENFORCEMENT

Examination for compliance

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

Occupational pension funds and comparable institutions are subject to supervision by the cantonal supervisory authorities.

The cantonal supervisory authorities are in charge of examining whether occupational pension funds' regulations comply with the law. The implementation and amendment of regulations need prior approval from the competent cantonal supervisory authority. Moreover, the supervisory authorities can request annual reports regarding the occupational pension fund's business activities, review reports and audits prepared by other supervisory bodies (such as the control body and the pension expert, who is responsible for providing actuarial reports) and impose measures to remedy deficiencies.

Law stated - 31 January 2024

Penalties

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

Such sanctions are not issued against the employer, but rather against the occupational pension fund or the responsible individuals.

If the cantonal supervisory authority finds deficiencies, it can take appropriate measures. Such measures include:

- requests for information;
- the issuance of instructions to the occupational pension fund, auditors or pension expert;

- requests for expert opinions;
- the overruling of the occupational pension fund's decisions;
- the imposing of substitute measures;
- warnings or dismissal of the occupational pension fund's supreme body (or individual members of that body);
- an order regarding the official administration of the occupational pension fund;
- the appointment or dismissal of the auditor or pension expert; and
- prosecution of administrative offences.

Failure to comply with an order of the cantonal supervisory authority may constitute an administrative offence, punishable by fines of up to 4,000 francs.

Law stated - 31 January 2024

Rectification

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

The occupational pension fund is represented by its supreme body, which is responsible for the overall management of the occupational pension fund, ensuring the accomplishment of statutory tasks and determining the strategic objectives and principles of the occupational pension fund, as well as the accomplishment of those objectives and principles. It also determines the organisation of the occupational pension fund, ensures its financial stability and supervises its management. Both the employer and the employees are entitled to delegate representatives to the supreme body. In this way, the employer may supervise the activities of the occupational pension fund and its management.

It should be noted that many employers, especially small and medium-sized enterprises, decide to affiliate their employees with a collective occupational pension fund. Such collective occupational pension funds are open to multiple employers with a separate account for each employer. However, there only is one supreme body that is competent for the entire collective occupational pension fund. Consequently, each employer may not delegate a representative to the supreme body and some employers only will be indirectly represented by other employers' representatives.

Law stated - 31 January 2024

Disclosure obligations

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

Occupational pension funds are obliged to submit an annual report regarding their business activities. In addition, the cantonal supervisory authorities are entitled to inspect the reports

prepared by the auditors and pension expert. Moreover, the occupational pension fund, its auditors and the pension expert are required to report certain deficiencies coming under their respective purviews.

Law stated - 31 January 2024

31 | What disclosures must be provided to plan participants?

Occupational pension funds are obliged to inform beneficiaries annually of their vested benefits, the coordinated salary, the contribution rate and the asset balance. Normally, employees are provided with statements containing this information at the beginning of each calendar year. Moreover, the occupational pension fund is obliged to provide information regarding the organisation and the financing of the occupational pension fund, as well as information on the members of the supreme body.

Upon request from a beneficiary, the occupational pension fund is obliged to provide further information regarding its finances (ie, annual financial statements, the annual report, information on investment income, coverage of liabilities, etc).

Law stated - 31 January 2024

Enforcement mechanisms

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

If an occupational pension fund does not fulfil its information duties, beneficiaries may contact the supervisory authority. The supervisory authority then can issue an order. A person adversely affected by the decision may challenge such an order and ultimately, bring the matter before a court.

However, were an occupational pension fund to refuse to pay out retirement benefits, the individuals affected by this decision would need to take legal action and bring the matter before the courts directly. The supervisory authority is not competent in such cases.

Therefore, depending on the dispute, either the supervisory authority or the courts (civil courts or administrative courts) are competent.

Law stated - 31 January 2024

PLAN CHANGES AND TERMINATION

Rules and restrictions

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

As occupational pensions are administered via a separate legal entity with its own management and supervisory body, changes to a pension plan require a decision of the occupational pension fund. Therefore, the employer itself has no way to change the pension plan unilaterally.

Changes to the terms of a plan by the occupational pension fund generally are subject to such a reservation in the plan documents. Also, the changes must not adversely affect beneficiaries' vested benefits.

Law stated - 31 January 2024

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

An employer may decide to terminate its affiliation with a specific occupational pension fund and affiliate itself with a different occupational pension fund or establish its own occupational pension fund. However, this requires consultation with the employees or employee representatives, as well as their consent, in order to be valid. If no mutual decision can be reached, the decision is taken by an arbitrator.

In any case, employers are legally required to affiliate employees with an occupational pension scheme at all times. If an employer fails to do so, its employees automatically will be affiliated with the Substitute Occupational Benefit Institution.

Law stated - 31 January 2024

Insolvency protection

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

Since the occupational pension fund is a separate legal entity, employer insolvency does not affect the occupational pension fund directly. In addition, the occupational pension fund is subject to strict accounting and reporting regulations.

If an employer becomes insolvent and ceases to pay the required contributions to the occupational pension fund, the occupational pension fund is privileged over most other creditors with regard to those contributions.

Moreover, occupational pension funds themselves are affiliated with a security fund to which they pay contributions. If an occupational pension fund becomes insolvent, the security fund assumes responsibility for providing the statutory benefits to the beneficiaries.

Law stated - 31 January 2024

Business transfer

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

If the employer is acquired by way of a share deal, only the shareholder structure changes. In the same way that the former shareholders had no obligations towards the occupational pension fund, the new shareholders also do not. Therefore, a share deal generally should not affect employees' retirement benefits or the target company's affiliation with an occupational pension fund. However, especially in group structures, there frequently are occupational pension funds exclusively for the group. If a company is no longer part of the group following the share deal, the continuation of the occupational pension scheme most likely would not be possible. In such cases, the target company must terminate the previous affiliation agreement within a reasonable period of time and conclude a new affiliation agreement with a different occupational pension fund.

If the transfer takes the form of a transfer of an undertaking, or a part thereof, such that the employment relationships are transferred statutorily, the acquiror assumes the undertaking's employment relationships and all incumbent rights and obligations. The Federal Supreme Court of Switzerland has yet to rule as to whether the transfer of an undertaking includes the transfer of the affiliation contract with the occupational pension fund with regard to the transferred employees. In this context, it is advisable to address this matter contractually, with the involvement of the occupational pension fund, in order to find a mutually agreed solution (ie, the continuation or discontinuation of the affiliation with the occupational pension fund).

Transfers of undertakings (or parts thereof) also may result in the (partial) liquidation of the occupational pension fund. The events and conditions that trigger a partial liquidation are specified in the occupational pension fund's regulations concerning partial liquidation.

Law stated - 31 January 2024

Surplus

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

Were an occupational pension fund to be liquidated, any surplus amounts must be distributed to the beneficiaries in accordance with objective criteria laid out in the distribution plan. If there are accrued liabilities, these amounts are not transferred to the beneficiaries, but rather to a new pension fund if the beneficiaries change occupational pension funds and that occupational pension fund assumes the associated risks.

Law stated - 31 January 2024

FIDUCIARY RESPONSIBILITIES

Applicable fiduciaries

38 | Which persons and entities are 'fiduciaries'?

Supervision of the occupational pension fund and its management is carried out by:

- the supreme body, which is made up of employee and employer representatives;

- the pension expert;
- the auditor; and
- the cantonal supervisory authorities.

Therefore, all of these entities can be considered fiduciaries, as their goal is to protect beneficiaries' rights.

Law stated - 31 January 2024

Fiduciary duties

39 | What duties apply to fiduciaries?

Their duties include supervision and reporting obligations, as outlined above.

Law stated - 31 January 2024

Breach of duties

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

If the failure of the fiduciaries to discharge their duties results in a loss, the occupational pension fund is entitled to claim that loss as damages. Also, if the beneficiaries suffer losses, they too may claim damages.

Moreover, failure to comply with specific duties may be penalised under public law (ie, administrative or criminal law) and could result in fines.

Law stated - 31 January 2024

LEGAL DEVELOPMENTS AND TRENDS

Legal challenges

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

Not applicable.

Law stated - 31 January 2024

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

Not applicable.

Law stated - 31 January 2024

Future prospects

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

Occupational pension plans remain an essential component of retirement savings, especially as state pensions are being adversely affected by the large number of individuals retiring.

Against this background, the funding of the state pension system has become increasingly difficult. In light of this, as well as the increase in life expectancy and the state of the financial markets, the Swiss parliament adopted a bill reforming the occupational pension system to meet these challenges (see 8.1 below). However, it remains to be seen whether this reform will enter into force, as it could be voted down in a referendum. Critics of the reform fear a reduction in occupational pensions and significant, additional costs were the reform to be adopted.

Law stated - 31 January 2024

UPDATE AND TRENDS

Hot topics

44 | Are there any current developments or trends that should be noted?

In March 2023, the Swiss parliament passed a bill reforming the legal framework of the occupational pension system. This reform includes a reduction of the annual minimum conversion rate (ie, the percentage of the accrued capital that can be drawn as a pension) from 6.8 per cent to 6.0 per cent. The purpose of this reform is to increase pension coverage, improve retirement benefits for part-time employees and deal with an increasing life expectancy and the state of the financial markets. In particular, the state of the financial markets means that returns are no longer sufficient to maintain the annual rate of 6.8 per cent.

In addition, this reform would change the basis for calculating the amount subject to mandatory contributions to occupational pension plans, which would lead to increased savings contributions, compensating the conversion rate reduction. To cushion the impact of these changes, the reform also provides for transitional arrangements in the form of pension supplements for certain age groups. However, a referendum on the reform will be held in 2024, meaning it still could be rejected by Swiss voters.

Moreover, in November 2023, the Swiss Federal Council decided to raise the minimum interest rate for occupational pension plans from 1 per cent to 1.25 per cent. This new interest rate sets the minimum interest that must be earned on assets coming under the mandatory occupational pension scheme (see 3.1.1 above).

Further, on 3 March 2024, Swiss voters will decide whether to approve a popular initiative that would provide for a 13th yearly state pension payment (as opposed to the current 12). Critics of the popular initiative, who include the Swiss Federal Council and the Swiss parliament, argue that it is too costly.

Law stated - 31 January 2024

walderwyss attorneys at law

Tabea Gutmann
Kathryn Kruglak
Rayan Houdrouge
Irene Suter-Sieber

tabea.gutmann@walderwyss.com
kathryn.kruglak@walderwyss.com
rayan.houdrouge@walderwyss.com
irene.suter@walderwyss.com

Walder Wyss Ltd

[Read more from this firm on Lexology](#)