360°Benefits I News

Key legislative developments and reform projects in the 2nd pillar from 2021 onwards

Last year saw a number of important adjustments to the legislation. As an introduction to the latest developments, we therefore refer to our earlier articles "Amendments to ordinances relating to occupational pension plans" of 1 October 2020 and "Legislative developments" of 14 February 2020.

Regulation in the area of the second pillar is in constant flux, even if various important reforms are only progressing slowly. The current situation with Covid-19 does not help though it could put certain topics into perspective.

In this article, we will give you an overview of current and upcoming changes in law and reform projects that are relevant for pension funds. Currently, there is a need for action, in particular regarding the implementation of the supplementary benefits reform (continued insurance), the implementation of the reform of the first pillar disability insurance and the implementation of the reform of the Data Protection Act.

In the first chapter, we will address changes **entering into effect in 2021**, including**:**

- Supplementary benefits reform
- Reform of the Federal Act on the General Aspects of Social Security Law and associated Ordinance
- Brexit

In the second chapter, reforms **entering into effect as of 1 January 2022** or later will be addressed, including:

- Development of first pillar disability insurance
- Reform of the Data Protection Act
- Occupational benefits reform

We are happy to keep you up to date and to support you in the implementation of these changes. We also invite you to contact us if you have any questions or suggestions.

Various amendments as of 1 January 2021 and 1 July 2021

1. Key figures old age/occupational benefits insurance (*AHVG/BVG; LAVS/LPP*) and inflation compensation, as at 1 January 2021

As of 1 January 2021, the first pillar old age and disability pensions were slightly adjusted to the current price and salary developments, as well as the respective thresholds in occupational benefit. You can find details of the new key figures here: Key figures (in German)

At the same time, the mandatory occupational survivors' and disability pensions paid out since 2017 were adjusted for inflation. The adjustment rate is 0.3%. It should be noted that pensions starting in 2008, 2011 or 2012 as well as after 2017 remain unchanged and will be adjusted on 1 January 2023 at the earliest.

However, the Federal Council did not consider it necessary to adjust the minimum interest credit rate for occupational pension plans, meaning that it will remain at 1% in 2021.

Comment: In pension funds providing both mandatory and over-mandatory benefits, the Board of Trustees decides on an inflation adjustment. Such an adjustment is not required, as long as the minimum interest credit rate is paid.

2. Changes introduced as a result of the Covid-19 pandemic

Use of employer contribution reserves

Employers continue to have the option to use existing employer contribution reserves also for the payment of due, not yet paid and future employee contributions. This option was extended on 11 November 2020 to 31 December 2021.

Comment: This allows more flexibility for the employer in the event of liquidity constraints and helps the pension fund to avoid outstanding contributions

Welfare funds

In principle, the employee bears 20% of the loss of earnings in the case of short-term work, as the employer is only obliged to advance the short-term work compensation to the amount of 80% of the earnings.

According to the communication dated 6 May 2020 of the Oversight occupational benefits supervisory authority (OAK BV/ CHS-PP), welfare funds may, in the event of short-term work as a result of the Corona pandemic and for the duration of the pandemic, pay out part or all of the difference of 20% to the full earnings, as a benefit to their affected beneficiaries.

Comment: It is up to the Board of Trustees of the respective welfare fund to decide whether or not and if yes to what extent and within what timeframe, the welfare fund should pay out benefits to compensate for the loss of earnings to its affected members.

3. Supplementary benefits reform, as at 1 January 2021

With the introduction of the reform, a continued insurance option for older employees is created in the occupational benefit scheme. This enables them to receive a pension from an occupational benefit scheme despite their early release from their employment relationship as initiated by the employer (art. 47a occupational pensions act [*BVG/LPP*]). As part of the Covid-19 legislation, this possibility was extended to employees who involuntarily lost their job after 31 July 2020.

Comment: In addition to adjusting the plan rules, we recommend checking the reinsurance contracts to see whether the new category of members who continue insurance is included, in order to ensure congruent reinsurance. It is also recommended to check if an adjustment to the affiliation contracts would be appropriate.

With regard to cross-border commuters, the following shall be noted: If a person is no longer subject to the first pillar old-age, survivors' and disability insurance (*AHV/AVS*) (e.g. because he or she does not (no longer) live or work in Switzerland; cf. art. 1a *AHVG/LAVS*) and if a voluntary first pillar old-age, survivors' and disability insurance (*AHV/AVS)* is not possible either (e.g. because he or she lives in the EU; cf. art. 2 *AHVG/LAVS*), continued insurance in the occupational benefit scheme is no longer possible (art. 5 para. 1 *BVG/LPP*). This also applies to continued insurance under art. 47a *BVG/LPP*. These persons, however, are entitled to draw retirement benefits if the specific requirements of the plan rules are met.

For more details on the new continued insurance, please refer to our earlier article Continuation of insurance for older employees (in German) of 1 July 2020.

4. Reform of the Federal act and ordinance on the general aspects of social security law, as at 1 January 2021

This reform creates a new legal basis for the monitoring of insured persons. Even though the Federal act and ordinance on the general aspects of social security law (*ATSG/LPGA and ATSV/OPGA*) are not directly applicable to occupational benefit schemes, some adjustments, namely the new introduction of art. 26b *BVG/LPP* (coordination between the first and second pillar), the adjustment of art. 35a para. 2 *BVG/LPP* (forfeiture of the right to reclaim) and the adjustment of art. 27b and 27e *BVV 2/OPP 2* (compensation between social insurance providers in the event of recourse) have an impact on occupational benefit schemes.

Comment: The pension fund administration must take these changes into account when processing benefit cases.

For further details, please refer to our article Legislative developments of 14 February 2020.

5. Paternity leave and leave to care for relatives, as at 1 January 2021

In addition to the 14-day paternity leave financed through the income replacement scheme (*EO/APG*) the Federal Council decided on 7 October 2020 to bring into force the new Federal act on improving the compatibility of employment and care for relatives in two stages. The first stage came into force on 1 January 2021 and extends paid leave to care for relatives, i.e. family members and life partners. The leave is 3 days per occurrence, with a maximum of 10 days per year of service, whereby the 10-day limit does not apply to childcare.

The second stage will come into force on 1 July 2021. Among other things, paid leave for the care of seriously ill or injured children to a maximum of 14 weeks shall be introduced. In this context, art. 8 para. 3 *BVG/LPP* will be updated as well: the previous coordinated salary shall remain valid at least as long as a care leave pursuant to art. 329i Swiss code of obligation (*OR/CO*) lasts.

Comment: Depending on the wording in the plan rules, the pension schemes might need to update their rules accordingly.

6. Brexit, as at 1 January 2021

At the end of 2020, the post-Brexit transition period ended and the bilateral agreements between Switzerland and the EU ceased to be valid with regard to the United Kingdom (UK).

In the area of social security, the Agreement on Citizens' Rights signed on 25 February 2019 is applicable since 1 January 2021, safeguarding the rights of Swiss nationals in the UK and, conversely, of UK nationals in Switzerland, acquired under the Agreement on the Free Movement of Persons between the EU and Switzerland before the end of 2020. In addition, there is a decision of the Swiss-EU Joint Committee to the FMOPA, which extends the protection of rights to EU nationals. It should be noted that according to the Communication on Occupational Pension No. 154, #1053 of the Federal office of social insurance, the Agreement on Citizens' Rights does not apply to the cash payment of vested benefits accounts and thus, after 1 January 2021, the entire vested benefits of the second pillar may be paid out based on Art. 5 para. 1 lit. a Vested Benefits Act (*FZG/LFLP*).

Employed persons from the UK entering Switzerland on or after 1 January 2021 will henceforth be considered third-country nationals and must therefore meet the strict admission requirements of the Federal act on foreign nationals and integration (*AIG*). This also means that regarding the coordination of social security, national law applies and, until a new bilateral agreement is concluded, the bilateral social security agreement of 1968 between Switzerland and the UK shall apply again. This agreement, however, does not regulate occupational pension benefits, which means that those are not coordinated between Switzerland and the UK and the rights of the two states apply in parallel and cumulatively. This can lead to double subordination and/or gaps.

Comment: It must be checked in each individual case which regulation applies and whether there are transitional rules. We are happy to support you in dealing with complex individual issues.

7. Federal act and ordinance on bridging benefits for older unemployed persons, expected as at 1 July 2021

The Parliament adopted the new law on 19 June 2019. The ordinance is in consultation until 11 February 2021. The reform introduces bridging benefits until the first pillar retirement pension is available. This allows for a secure transition to retirement without the need to consume assets, early drawdown of the first pillar retirement pension or to touch the retirement capital accumulated in the second or third pillar.

For further details, please refer to our article Legislative developments of 14 February 2020.

Amendments to the law as of 1 January 2022 or later

1. Partial reform of the insurance policies act (*VVG/LCA*), as at 1 January 2022

The revised law will introduce numerous improvements for customers. A right of cancellation of 14 days will be introduced for insurance contracts, and contracts with a long term can be terminated after three years by means of an ordinary notice period. Furthermore, the statute of limitation period for claims arising from insurance contracts will be increased from two to five years. Finally, the revised Insurance Policies Act contains regulations on electronic business transactions.

Comment: The consequences of the revised law for individual pension funds must be clarified ahead of time. There might be a need for formal action, in particular regarding an adjustment of the plan rules in connection with the breach of duty of disclosure and with health reservations.

2. Reform of the disability insurance act (first pillar), expected as at 1 January 2022

The reform was adopted by Parliament on 19 June 2020. In addition to improving the integration and strengthening the employability of insured persons, changes directly relevant to the occupational benefits providers will be made as well:

- Continuous pension scale

  In the revised disability insurance act, pensions are no longer paid out as a quarter, half, three quarters or full pension, but as a percentage of a full pension. For a degree of disability of 50-69%, the disability pension corresponds to the percentage of the degree of disability. For a degree of disability above 70%, a full disability pension shall be paid. For a degree of disability between 40% and 49%, the percentage amounts to between 25% and 47.5% (new art. 28b disability insurance act [*IVG/LAI*]).

  This new pension calculation also applies to the compulsory occupational benefit scheme (new art. 24a *BVG/LPP*). Additionally, there are various transitional provisions for pensions in payment, partly depending on the age of the insured person.

- Exchange of data

  The reform of the disability insurance also entails new and adapted provisions on data exchange (new art. 87 para. 2 and new art. 88 *BVG/LPP*). Pension funds are entitled to notify other social insurance providers concerned, including other occupational pension schemes, of an unlawful drawing of benefits. These provisions aim to combat abuses.

Comment: It is recommended to deal with the topic of the continuous pension scale in particular at an early stage, in order to allow the amendment of the plan rules, as well as the implementation of the changes by the pension fund administrator, and for the plan members to be properly informed. Alternative solutions may still be provided in non-mandatory occupational benefits schemes as well as in plans providing mandatory and over-mandatory benefits, provided that the benefits at least cover the statutory minimum provisions (imputation principle). The pension funds will thus have to assess how to implement the new provisions in their plan rules. It should be noted that a split solution is complex in terms of pension fund administration and would be rather difficult to communicate.

3. Stabilisation of old-age, survivors' and disability insurance (*AHV21/AVS21*), expected as at 1 January 2022

On 28 August 2019, the Federal Council adopted the dispatch on the amendment of the old-age, survivors' and disability insurance act for the attention of Parliament. The reform is currently being discussed in Parliament and may still undergo some amendments. It is considered possible for it to take effect from 1 January 2022, though this depends on the discussions in Parliament and on the date of the referendum.

The objectives of the reform are to safeguard first pillar retirement pensions, to maintain the current pension level and to stabilise the financing of the first pillar pension scheme. In particular, the increase of the women's retirement age, the flexibilisation of retirement and incentive measures to continue working after the age of 65 are intended.

The reform would enable a more flexible transition to retirement. Politically, an increase in the retirement age for women is difficult to achieve and any developments in this regard remain to be seen.

Comment: These changes would also apply to occupational benefit schemes. The pension funds would have some flexibility to go beyond the legal provision in certain areas and to provide over-mandatory benefits in their plan rules.

Further details on the most important changes in the area of occupational benefits can be found in our article OASI 21: What impact will it have on the OPA? of 10 September 2019.

4. Reform of the data protection act, expected mid-2022

The revised data protection act (*DSG/LPD*) was adopted by the Parliament on 25 September 2020. The revised ordinance to the data protection act is currently being drafted. Publication is expected in the first half of 2021. The date of entry into force of the reform is still pending.

The reform specifically aims at increasing the transparency of data processing and at strengthening the self-determination of data subjects with regard to their data. To achieve these goals, the information requirements of the bodies responsible for data processing shall be expanded. The reform also aims to achieve a level of data protection equivalent to that of the EU. The data protection provisions shall be aligned with the General Data Protection Regulation (GDPR), whereby the revised *DSG/LPD* deviates from the provisions of the GDPR in various points ("Swiss Finish").

Comment: The pension funds will also need to analyse and document data processing procedures, adapt data protection agreements, guarantee data security and ensure information rights and obligations. With a systematic approach and a tightly managed implementation project, the necessary adjustments may be implemented relatively leanly.

5. Reform of the occupational pensions act (*BVG/LPP 21*)

On 25 November 2020, the Federal Council adopted the dispatch on the reform of the occupational pensions act. This is the reform proposal of the social partners.

The most important goals are to secure the level of pension, to strengthen the financing and to improve the coverage of part-time employees (and thus especially women). In the process, the conversion rate relating to mandatory occupational benefits shall be reduced to 6%. Future recipients of retirement and disability pensions shall receive a lump-sum pension supplement. Furthermore, the coordination offset shall be reduced, and the retirement credits shall be adjusted and less staggered than today. It is planned to finance the pension supplement by additional contributions of 0.5% of the contributory income from the old-age, survivors' and disability insurance (*AVS/AHV*).

Comment: The reform is controversial, especially because of the lump-sum pension supplement. The parliamentary consultation is pending, and the bill is subject to a referendum. Accordingly, the outcome is still very uncertain at this stage.

6. Modernisation of supervision in the first pillar and optimisation in the second pillar

The dispatch and the draft bill were published on 20 November 2019. As far as can be seen, there have been no new developments so far.

We have already presented the proposed changes in the area of occupational pension benefits in our article Legislative developments of 14 February 2020. In particular, the planned changes regarding the transfer and sufficient funding of pensioner-only portfolios is very topical and relevant for the pension funds, the plan members as well as the employers.

Furthermore, the new regulatory competence foreseen in favour of the Federal Council to regulate admissibility and terms of broker compensation (new art. 69 occupational pensions act [*BVG/LPP*]) need be mentioned in this context. This topic continues to generate lively discussion.

Comment: There is a practical need to maintain the possibility of transferring pensioner-only portfolios and not to restrict such transfers too much, provided these portfolios are sufficiently funded. It is important for the legislator to balance the needs of pensioners, active plan members, employers as well as the pension funds in these regulations.

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An overview on the range of our legal consulting services as well as our legal team is available online in our: Legal Flyer