

360°Benefits | News

Overview legislative developments and law reforms in the 2nd pillar from 1 January 2022

Various changes to the law came into force on 1 January 2022. At the same time, further revisions will come into force in the next few years, which will also have an impact on the 2nd pillar. In addition, the three major law reforms in social insurance law (AHV, IV, BVG) have been discussed in parliament and partly passed. There is currently a need for action, particularly with regard to the implementation of the revision of the Data Protection Act (DPA).

We would be happy to support you in implementing these changes. Please also feel free to contact us if you have any questions or suggestions. You can find an overview of our range of services and our legal team [here](#).

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Changes effective from 1 January 2022

1. Further development of disability insurance (IV)

▪ Linear pension system

The further development of the IV came into force on 1 January 2022. Under disability insurance, pensions are no longer paid out in one quarter, one half, three quarters or in full, but as a percentage of a full pension:

- For a degree of disability between 40% and 49%, the percentage shares are between 25% and 47.5%.
- For a degree of disability of 50-69%, the pension corresponds to the percentage share.
- For a degree of disability of over 70%, a full IV pension continues to be paid.

In addition, the law contains detailed transitional provisions for pensions already in payment on 31 December 2021, regulated differently for three age groups. The new linear pension system of the IV also applies to compulsory occupational pensions (Art. 24a BVG - i.e. for the shadow account, or, if benefits are reduced to the legal minimum in case of a health reservation). Pension funds are free to decide whether or not they want to implement the linear pension system in the over-mandatory and extra-mandatory pension plans as well.

▪ Other changes relevant to the pension funds

The principles for assessing the degree of disability are now regulated at ordinance level. In particular, the previous practice, which is based on case law, was adopted.

Then, in connection with the fight against abuses, new provisions on the exchange of data between social insurance schemes were implemented¹.

Note: Since the linear pension system now applies in the compulsory system, the corresponding adjustments must be implemented in the administration of insured persons. For the sake of consistency, it is generally recommended to implement the linear pension system in the over-mandatory system as well.

2. Measures to safeguard pension assets in case of violation of maintenance obligations

The specialised agencies for providing support in the collection of payments are now authorised to report persons who are in arrears with at least four monthly maintenance payments to the pension funds and vested benefits institutions². The benefits providers must in turn inform the specialised agency if a benefit to the insured person concerned in the form of a lump sum, a cash payment³, or an advance withdrawal to promote home ownership⁴ amounting to at least CHF 1'000 is due. The specialised agency must also be informed in the event of a pledge or realisation of pension assets. It can thus initiate legal steps to secure maintenance claims at an early stage.

¹ For further details, please refer to our 360°Pension I [News](#) on the most important legislative developments and law reforms in the 2nd pillar as from 2021.

² Art. 13 InkHV, Art. 40 BVG, Art. 24^{fbis} FZG.

³ Art. 5 FZG.

⁴ Art. 30c BVG.

Payment of the above-mentioned benefits to the insured person is not permitted within at least 30 days after the notification has been sent to the specialised agency. Both the specialised agency and the benefits provider must use the [forms](#) published on the FSIO website for the notifications. These provisions apply to both compulsory and supplementary insurance.

Note: Benefits providers must ensure compliance of the technical administration with these measures, in particular receipt and registration of notifications, notification to the specialised agency in the event of a benefit claim and compliance with the statutory retention period for payment. For the sake of clarity and to regulate interest, it is recommended that the pension fund regulations refer to the new provisions.

3. New asset class for unlisted Swiss investments

On 17 November 2021, the Federal Council decided to introduce a new investment category for non-listed investments. The corresponding amendments to the two ordinances BVV 2 and ASV came into force on 1 January 2022. Unlisted Swiss investments can be managed as a separate investment category, with a limit of 5% of the invested assets. Previously, such investments were reflected in the category "alternative investments" with a limit of 15%.

Note: This adjustment is intended to facilitate investments in long-term investments, i.e. in innovative technologies, by not affecting the quota of alternative investments. The extent to which a pension fund can and wishes to exhaust these limits depends on its risk capacity. The corresponding responsibility continues to lie exclusively with the pension fund's relevant decision-making body.

This investment category is only open to unlisted Swiss investments: privately held companies or debtors domiciled and operating in Switzerland. The investments can be made via direct investments, collective investments or derivative financial instruments, whereby only the actual investment is considered for the "Switzerland" criterion. Where an investment company, a financing vehicle or the fund investing in this company is domiciled is not relevant.

4. New transparency and internal control requirements for pension funds in competition

The OAK BV W-01/2021 directives - Requirements for transparency and internal control for pension funds in competition have been in force since 26 January 2021. The directives must now be implemented for the first time from the end of the 2021 financial year. This means that the board of trustees of pension funds in competition, i.e. with several independent affiliations, must annually submit to the supervisory authority the following documents:

- the explanations on the risk and decision-making structures and
- the confirmation of the pension fund expert as part of the actuarial report regarding correct and appropriate financing of each of the structural models.

In addition, the board of trustees must ensure that the pension fund in competition maintains internal controls commensurate with its size and complexity, both at the level of the overall pension fund and at the level of the underlying, risk-bearing liability groups and affiliations. The internal control requirements must be audited for the first time for the 2022 financial year. A transitional period for the adaptation of the regulations applies over the same period. The requirements for internal control must now be set out in the pension fund's regulations.

Note: For the board of trustees, this means, in particular changing the internal control and higher governance requirements. It is advisable to take this opportunity to comprehensively review the pension fund's governance and, if necessary, also adapt it in other areas.

It is interesting to note that the supreme supervisory authority is introducing special regulations for pension funds in competition that clearly go beyond the general requirements. It is a *lex specialis* for increased risks, similar to the special rules applicable to listed companies. It would not be surprising if we were to see similar regulatory trends in the future.

5. Changes in the international context

▪ Brexit

Switzerland and the United Kingdom (UK) concluded a new social security agreement on 9 September 2021. The agreement is intended to ensure the long-term coordination of the social security systems of the two states after Brexit. It has been provisionally applicable since 1 November 2021¹ and will enter into force definitively following approval by the parliaments. The new agreement contains the same coordination principles as the Agreement on the Free Movement of Persons between Switzerland and the EU. From the date of provisional application of the new agreement, an employer based in the UK must pay compulsory social security contributions for its employees working in Switzerland and must also insure its employees in the occupational benefit scheme. In the eyes of the Federal Social Insurance Office, however, the cash payment of vested benefits is not covered by the new social security agreement. In future, persons permanently leaving Switzerland for the UK will be able to claim their vested benefits (both supplementary and compulsory) as a cash payment, in contrast to leaving for a country in the EU.

Then, reference shall be made to the agreement on citizens' rights that Switzerland and UK have concluded to guarantee the rights acquired under the Agreement on the Free Movement of Persons. This agreement has been applicable since 1 January 2021.

▪ Covid-19

The social security subordination should not change due to the Covid-19 restrictions. A person is considered to be gainfully employed in Switzerland even if he or she cannot physically carry out his or her activity in Switzerland due to Covid-19 (in particular obligation to work from home). The subordination to Swiss AHV also results in subordination to Swiss occupational benefits. In terms of time, different rules apply depending on the agreement with the individual states or at European level, which is particularly relevant for cross-border commuters.

Note: Settlement issues in an international context remain complex and must be considered on a case-by-case basis.

¹ For the legal situation up to 1 November 2021, please refer to our 360°Benefits I [News](#) on the most important legislative developments and law reforms in the 2nd pillar as from 2021.

6. Partial revision of the Insurance Contract Act

The partial revision of the insurance contract act (ICA) came into force on 1 January 2022¹. The revised provisions of the ICA affect pension funds on the one hand, insofar as they have concluded reinsurance contracts. On the other hand, in the absence of provisions in the pension fund regulations, the ICA is applicable by analogy in the case of (breaches of) notification obligations (e.g. if a health questionnaire is requested from the insured person and he or she provides false or incomplete information).

Note: In principle, there is no need for pension funds to change. In individual cases, it may make sense to adopt the regulations on electronic business transactions.

In this context, we would like to point out that a subsequent health reservation is not admissible. Instead, the plan rules must stipulate that the over-mandatory pension contract will be terminated in the event of a breach of the notification obligations.

7. Key figures AHV/BVG and inflation compensation

The key figures were not adjusted as per 1 January 2022 because the minimum AHV retirement pension for 2022 was not adjusted. The BVG minimum interest rate remains at 1%. The details of the key figures can be found [here](#).

The survivors' and disability pensions under the BVG compulsory scheme that have applied since 2018 will be adjusted for inflation for the first time. The adjustment rate is 0.3%. Furthermore, the pensions paid out since 2012 must be adjusted to inflation (adjustment rate 0.1%).

Note: In over-mandatory pension funds, the board of trustees decides on any inflation adjustment. Such an adjustment is legally not required, as long as the BVG minimum benefits are paid.

¹ We refer to our comments in our 360°Benefits I [News](#) on the most important legislative developments and law reforms in the 2nd pillar as from 1 January 2021.

Changes after 1 January 2022

1. Revision to the data protection law

The revised DPA was adopted by Parliament in autumn 2020. The consultation period for the revised Data Protection Ordinance expired on 14 October 2021. Currently, the industry does not expect the reform to come into force until the beginning of 2023. The new DPA is intended to bring the current data protection law up to the level of the EU General Data Protection Regulation (GDPR) and at the same time take into account new technical developments. The revised Data Protection Act increases the requirements for data protection compliance. Pension funds must adapt their processes and documentation (e.g. establish records of processing activities, adapt contractual bases, establish data protection declarations and processes for reporting data protection violations and requests for information from data subjects). The penalty provisions have also been tightened, which, in contrast to the GDPR, are of a personal nature and provide for fines of up to CHF 250,000, among other points. However, the principles of data processing remain more or less unchanged.

Note: The revision of the data protection law also affects pension funds. They will have to analyse the handling of personal data processed by them or on their behalf and make the necessary adjustments to comply with the revised data protection law. Data protection compliance is a governance task that must not be neglected due to reputation risks and significant personal penalties. We recommend including continuous monitoring in the internal control system (ICS) after the implementation of the new requirements. Timely, efficient planning enables correct and pragmatic implementation. We have already provided support to clients in implementation projects and would be happy to assist you too.

2. Stabilisation of the AHV (AHV 21)

Parliament passed the AHV reform on 17 December 2021. The key points are the increase of the retirement age for women to 65 (new: reference age). Compensation measures are planned for nine transitional years. The reform also provides for the possibility of flexible retirement between the ages of 63 and 70 as well as a smooth transition from working life to retirement through the introduction of a partial pension advance and a partial pension deferral. Furthermore, the law is intended to create incentives for the continuation of gainful activity from the age of 65.

It was also decided to increase the value added tax for the additional financing of the AHV (increase of the standard rate by 0.4%). The decision to increase value added tax is subject to a mandatory referendum. Otherwise, the optional referendum applies. The referendum deadline is 7 April 2022. Trade unions, left-wing parties and associations have already launched a referendum.

Note: For compulsory occupational benefits, the reference age was also standardised at 65 for men and women, with the possibility of flexible pension withdrawal. With regard to the details - for example, contributions after the age of 65, voluntary contributions, continued insurance of previous insured salary, leaving the termination benefit until the reference age - pension funds have some room to manoeuvre.

3. Reform of occupational benefits law (BVG 21)

The Federal Council passed the draft proposal for the reform of the law on occupational benefits on 25 November 2020. The Federal Council's draft is based on a draft by the social partners. The most important goals are to secure the pension level, strengthen financing and improve coverage for part-time employees. The Federal Council's proposal provides for a reduction of the conversion rate in the compulsory occupational benefits to 6%. This is to be compensated with a pension supplement for a transitional generation of 15 years, to be financed on a solidarity basis by an additional contribution of 0.5% of the income subject to AHV contributions. The bill then provides for a halving of the coordination offset and an adjustment to old-age credits.

The draft law was discussed in the National Council in December 2021. The National Council decided in favour of the proposed reduction of the conversion rate in the compulsory occupational benefits to 6%. The compensation measures are to apply for a transitional generation of 15 years, graduated in five-year steps. Pension supplements are to be paid only to those insured persons whose regulatory pension entitlement does not exceed the statutory pension entitlement plus pension supplement. Thus, over-mandatory benefits are taken into account and should lead to no pension supplement being owed, especially in the case of over-mandatory pension funds. Primarily, any pension supplements are to be financed by means of provisions. Solidarity-based financing by all insured persons will come into play insofar as the reserves of the individual pension funds are not sufficient.

The National Council then lowered the entry threshold. Employees with an annual salary of CHF12,548 or more should be subject to compulsory occupational benefits. The coordination offset is to be halved. This will help part-time employees, in particular to increase their insured salary in the occupational benefits system. Retirement savings shall now begin at the age of 20. Retirement credits of 9% between 20 and 44 years of age and of 14% from 45 years of age up until the regular retirement age are planned. Further adjustments concern self-employed persons and employees who work for several employers and whose total annual salary exceeds CHF 12,548.

Note: Although progress has been made in the legislative process, the outcome of this reform still remains open.

4. Modernisation of supervision in the 1st pillar and optimisation in the 2nd pillar

The most important innovations in the Federal Council's legislative proposal of 20 November 2019 from a pension fund perspective concern - in addition to a detailed regulation of the duties of pension fund experts and regulations on the regional supervisory authorities - the detailed regulations regarding the transfer of pensioner portfolios and the granting of a competency to the Federal Council for the regulation of broker compensation¹.

The Council of States dealt with the matter in June 2021. In doing so, it dispensed with the proposed introduction of a blanket competency for the Federal Council to regulate broker compensation at ordinance level. On the other hand, the provisions on the transfer of pensioner portfolios were adopted. It is envisaged that the pension fund expert will confirm that there is sufficient funding of the pension obligations. The supervisory authority must check whether the requirements are met and must approve the transfer before it is executed. Pensioner portfolios and pensioner-heavy portfolios can only be taken on if the corresponding obligations are adequately financed.

¹ See our 360°Benefits I [News](#) on important legislative developments and reform projects in the 2nd Pillar as from 2020.

The National Council is expected to debate this reform in spring 2022.

Note: In practice, the question frequently arises as to whether and how pensioner portfolios can be transferred. It is to be welcomed that this is regulated by the legislator. It is to be hoped that the requirements will continue to allow transfers of pensioner portfolios not only theoretically but also in practice and that the recently restrictive supervisory practice, will return to normal with the statutory regulation.

5. Corporation law

Parliament passed the reform of Swiss corporation law on 19 June 2020. As a result, the provisions on compensation at listed companies, which were previously regulated in the Ordinance against Excessive Compensation at Listed Companies (VegüV), will be transferred to the Swiss Code of Obligations. The provisions were assumed largely unchanged, but in some cases supplemented or clarified. A few completely new regulations were inserted. For example, non-listed companies may also voluntarily subject themselves to the compensation provisions in whole or in part. According to the Federal Office of Justice, the entire reform is not expected to enter into force until 2023. This is with the exception of the regulations regarding gender benchmarks and transparency in the commodities sector, which already came into force on 1 January 2021.

It is now regulated for foundations that the total amount of the remuneration of the foundation board and the executive board must be disclosed separately to the supervisory authority on an annual basis (new Art. 84b Swiss Civil Code [ZGB]). Newly included in the BVG is the voting obligation of pension funds in the case of listed shares (new Art. 71a BVG) as well as regulations on reporting and transparency in connection with the exercise of voting rights (new Art. 71b BVG, adaptations of Art. 86b, 65a and 76 BVG). Previously, pension funds' voting and disclosure obligations were regulated in the VegüV.

Note: With regard to the voting obligation, this transfer into law does not bring any significant changes. The new disclosure obligations for remunerations in foundations, however, are far-reaching – under corporation law, such disclosure obligations only apply to listed companies. At the moment, it must be assumed that the new disclosure obligations for foundations will also apply to pension funds.

6. Revision of the Collective Investment Schemes Act (CISA)

In the 2021 winter session, Parliament created a new fund category in the CISA: Limited Qualified Investor Fund (L-QIF). This is intended to strengthen Switzerland as a fund centre and to enhance its competitiveness. It is a flexible collective investment scheme that is not subject to FINMA approval. The management of this new fund category, on the other hand, must be supervised by FINMA. This new fund category will only be available to qualified investors. These include, among others, pension funds with professional treasury operations.

Note: In the medium term, the L-QIF will allow pension funds greater flexibility and more innovation in asset management.

7. Further developments

The **inheritance law revision** will come into force at the beginning of 2023. In this regard, new regulations on 3a pillar foundations will also be implemented¹. Parliament and the electorate will continue to be interested in various topics relating to occupational benefits. It is worth mentioning that, for example, there is the popular initiative for secure and sustainable old-age provision (**pension initiative**, aimed at raising the retirement age to 66 for men and women, as well as with increasing life expectancy) as well as the **initiative for the introduction of a 13th AHV old-age pension**. In addition, regular motions are also submitted in parliament that affect pension funds. We will stay close to developments for you and keep you informed in a timely manner.

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This publication is intended for information purposes and does not comprehensively cover the topics dealt with. It is not intended to be a substitute for advice.

¹ In this regard, we refer to our [article](#) in the 360°Benefits I Magazine of November 2021.