

New law on top-up DC plans (1e-plans) in Switzerland effective 1 October 2017



On 30 August 2017, the Swiss Government published the new regulatory provisions regarding pension funds, which exclusively insure salaries above CHF 126,900 and offer their insured persons the choice between different investment strategies (so-called '1e-plans'). The new provisions aim to create a more attractive framework of conditions for those employers and pension funds, which enable their insured persons to select an individual investment strategy for part of their pension assets.

What are the modifications and what do they mean? How can you tackle the challenges of communicating and administrating 1e-plans? These and other questions are discussed in this newsletter. More around this topic can be found on our website.



BACKGROUND

Employers may offer their employees who earn more than CHF 126,900 per year a pension plan that allows an individual choice from different investment strategies. In this context, the term '1e-plans' is used, referring to the legal basis, namely [article 1e of the Ordinance on Occupational Retirement, Survivors' and Disability Pension Plans \(BVV 2\)](#).

Until now, such offerings have not been implemented as widely as expected. The reason might be existing statutory restrictions, as the requirements specified by the Federal Act on Vesting in Pension Plans (FZG) also had to be met by 1e-plans and the pension plan had therefore to pay out a statutory minimum amount in the event of a departure out of an insured person. In cases where the chosen investment strategy resulted in losses, this meant that the pension fund and the remaining insured persons had to bear the losses instead of the departing individual.

When the new [article 19a of the Federal Act on Vesting in Pension Plans \(FZG\)](#) enters into force on 1 October 2017, a new method of calculating the termination benefits will make it possible to transfer the effective value of the employees' retirement savings at the time of their departure. Any losses must therefore be borne by the employee himself or herself. To ensure a certain degree of protection for the employees, 1e-pension funds will have to offer at least one low-risk investment strategy in the future.

This enables companies to offer attractive pension solutions to their employees in the higher salary segment and, at the same time, to reduce their own pension liabilities. They can adapt their existing pension plans and, depending on the size of the company, can either set up their own 1e-pension fund or choose products of this sort from collective institutions.



LEGAL BASIS

CURRENT LEGISLATION

'1e-plans', as they are known, are governed by [article 1e, BVV 2 \(Choice of an investment strategy\)](#). Accordingly, different investment strategies within a pension plan may be offered only by pension funds which exclusively insure salary components in excess of one and one half times the upper limit pursuant to article 8, paragraph 1 of the Federal Act on Occupational Retirement, Survivors' and Disability Pension Plans (BVG) ($1.5 \times \text{CHF } 84,600 = \text{CHF } 126,900$, as of 2017).

Hence, employers may insure employees drawing salaries of CHF 126,900 or more with a 1e-pension fund for this salary component.

In this regard, the pension fund must currently comply with [article 17, FZG \(Minimum amount on leaving the pension institution\)](#). Since, according to article 17, paragraph 1, FZG, the insured person has a guaranteed minimum entitlement on departure, pension funds are currently forced to use fluctuation reserves or other mechanisms to ensure that this minimum entitlement can also be transferred in case the investment vehicle chosen by the insured person has performed negatively.

At present, these requirements make pension plans of this sort less attractive.

NEW LEGISLATION EFFECTIVE 1 OCTOBER 2017

The new framework of conditions for 1e plans is stipulated in the newly formulated [article 19a, FZG \(Entitlements in case of choice of investment strategy by the insured person\)](#) and in articles 1, 1e, 50, 53a and 54, BVV 2.

The principal purpose of article 19a, FZG and of the related adaptation of BVV 2 is to eliminate this inconsistency between the choice of an individual investment strategy and the guarantee defined in article 17, FZG.

PAYMENT OF EFFECTIVE VALUE OF RETIREMENT SAVINGS ON DEPARTURE (ARTICLE 19A, PARAGRAPH 1, FZG)

In divergence from articles 15 and 17, FZG, 1e-pension funds may stipulate that the effective value of the retirement savings at the time of departure is paid out to departing insured persons.

All other regulations relating to occupational pensions, including in particular the general principles ([article 1, paragraph 3, BVG](#)) and the BVG investment regulations will of course continue to be applicable as appropriate for these pension institutions as well. If an employer offers a pension plan with different investment strategies, participation therein will be mandatory for all employees who meet the objective criteria for admission to a plan of this sort (the 'collectivity principle').

CHOICE OF DIFFERENT INVESTMENT STRATEGIES

The characteristic feature of 1e-plans is that insured persons can choose from a specified number of different investment strategies. However, not all employees are willing or able to take higher investment risks with their retirement savings. To minimize the risk of loss for these insured persons, 1e-pension funds are obliged to offer at least one strategy with low-risk investments.

In particular, CHF cash and debt instruments with good creditworthiness in Swiss francs (such as postal checking and bank accounts, money market investments with maturities of up to 12 months, medium-term notes or Swiss mortgage deeds) are deemed to be low-risk investments.

Within 1e-plans, however, the number of permitted investment strategies is limited so that in practice, individualization of the investment strategy for each employee is prevented. For this reason, the permitted number of investment strategies is limited to 10

per pension plan, and it is not permitted to split the retirement savings among different investment strategies (the 'collectivity principle'). Adherence to the principle of appropriateness is also required in the case of 1e-plans. To take one example: when calculating the maximum amount for the purchase sum, no higher contributions than an average of 25% of the insured salary per possible contribution year without compound interest may be taken into account. Appropriateness must be maintained for each pension plan individually.

1e-plans may manage the investments either internally or they may select several external asset managers with the duty of care and offer their services to the pension schemes and their insured persons.

PENSION FUND'S DUTIES OF INFORMATION (ARTICLE 19A, PARAGRAPH 2, FZG)

When an insured person is selecting an investment strategy, a 1e-pension fund must inform that person about the different investment strategies and the related risks and costs.

1e-pension funds therefore have duties of information similar to those of a bank: when choosing an investment strategy, the customer enters into certain financial risks. The insured person must receive clarification about the risks and advice on the different investment options, and must be warned against over-hasty decisions. The information must be appropriate to the insured person's knowledge of the subject. Furthermore, the insured person's attention must be drawn explicitly to the additional costs related to his or her choice of strategy.

Consequently, the provision also requires a written confirmation by the insured person that he/she has received the relevant information before he/she decides to enter into an investment strategy. The same applies if the insured person changes the investment strategy. If, henceforth, only the effective value has to be paid out, it is possible that retirement savings will be reduced. The insured person must be aware of this.

Accordingly, 1e-pension funds must ensure by administrative means that all these clarifications are properly made, and that written confirmation thereof by the insured person is obtained. Case law relating to duties of due diligence and loyalty under contract law must be adduced analogously in order to gauge the pension fund's obligation to obtain information about the customer's level of knowledge and risk tolerance.

ACCRUAL OF INTEREST ON TERMINATION BENEFIT (ARTICLE 19A, PARAGRAPH 3, FZG)

As from the due date, the termination benefit does not have to accrue interest, in divergence from the principle of universal accrual of interest that applies in the occupational pension cover segment ([article 2, paragraph 3, FZG](#)). Since 1e-pension funds need make no provision whatsoever for interest accrual, it would be inconsistent to apply the principle of universal interest accrual, thereby creating another risk for the pension institution and the remaining insured persons. However, [article 2, paragraph 4, FZG](#) continues to be applicable. If all the information is available and the pension institution is in default with the transfer, the pension institution therefore bears the risk and is liable for default interest.

Difficulties may arise for 1e-pension funds if the employer delays notification of an insured's departure, or fails to give any such notification. If the investment vehicle posts losses since it was not liquidated because the pension fund was not notified of the departure, the question arises as to who has to bear these losses. Pension funds will probably make provision for suitable restrictions of liability in their rules.



WHERE DO OPPORTUNITIES AND RISKS LIE FOR EMPLOYERS AND EMPLOYEES?

Employers

Opportunities	Risks
Attractive, modern pension solution (e.g. via electronic platforms)	Multiple pension plans require more administrative outlay
Limitation of risks (investment risk, life expectancy, etc.)	Increased need for communication
With the right structure: no valuation in connection with international accounting	
Ideal solution for bonus insurance	Relatively high costs for small lump sums (at least initially)

Employees

Opportunities	Risks
Individual management of own pension assets is possible	Investment losses must be borne personally
Choice of investment strategy adapted to personal circumstances (age, risk appetite, etc.)	Untimely withdrawal from the investment vehicle (unless pension fund enables transfer of securities)
Greater transparency (costs of investment vehicles)	Higher personal administrative effort
Performance belongs solely to the insured person	No pension guarantee
Increased potential for purchase of additional pension benefits	Choice only between the investment strategies/vehicles offered by the pension fund
Access to professional investment advice	Only a small portion of the assets is invested in this way.



WHAT ARE YOUR NEXT STEPS?

1e-plans provide companies with the opportunity to offer their employees an attractive and modern pension solution and, at the same time, to minimize risks. Given the diversity of options for implementing a 1e-plan, and because the decision in favour of a 1e-plan amounts to a paradigm shift, a detailed analysis of the needs and the offering is highly advisable. We are glad to support your project, and our specialists in our Zurich and Nyon offices are looking forward to your contact.

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THE MAIN STEPS IN IMPLEMENTING A 1E-SOLUTION ARE AS FOLLOWS:

1. **Requirements analysis: needs of the employer, and of the employees?**
2. **Offering analysis: establishment of an own 1e-pension fund appropriate? Comparison of offerings on the market?**
3. **Which offer meets the stakeholders' needs? (see 1.)**
4. **Impact analysis: financial, administrative and other consequences from the implementation of a 1e-plan? Impact on the existing pension solution?**
5. **Design of the pension plan / obtain offerings**
6. **Communication of the new pension plan**
7. **Implementation of the new pension plan**
8. **Ongoing administration of the plan and advice for the employees**



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