

## INFORMATION SHEET

# Divorce/Dissolution of a registered partnership For your social security

### **Pension benefits settlement on divorce / dissolution of a registered partnership**

In the event of divorce or dissolution of a registered partnership, entitlements from occupational pension schemes represent the most important – and sometimes the only – assets held by the spouses/partners. So the question of how these assets are to be divided up is an important one.

The aim of the pension benefits settlement process is to divide the occupational pension entitlements that were accrued during the marriage/registered partnership between the spouses/partners. The pension benefits settlement therefore refers to the pension assets built up during the marriage/registered partnership, but not to the pension assets already held by the spouses/partners at the time of the marriage/registration of partnership. The latter remain the individual property of the respective spouse/partner.

In the interests of readability, the terms “marriage” and “registered partnership” will not be used simultaneously in the following text. All statements on divorce that follow shall be deemed to apply by analogy to the dissolution of a registered partnership.

### **Revision of divorce law as at 1 January 2017**

Until now, the pension benefit entitlements acquired during the marriage could only be split if neither spouse was already claiming retirement or disability benefits.

For cases in which one spouse was already drawing a retirement or disability pension, the law stated that appropriate compensation was to be made by other (i.e. private) means.

This law was widely criticized, particularly the fact that it gave rise to a gap in pension benefits for the entitled spouse – frequently the wife – who, having taken on family responsibilities during the marriage, did not have sufficient occupational benefits of their own. This gap could not be compensated if a pension was already being drawn at the time of divorce because, as previously mentioned, access

to occupational pension assets was no longer possible in this case. The low degree of protection provided for a divorced wife following the death of her former husband additionally came in for criticism, as the latter's payments from other means ceased on his death.

It was against this background that the law on divorce was revised. Assets from occupational pension schemes will be split between spouses on a fairer basis from now on.

The biggest change is that the division of pension assets will now be extended to those cases in which a retirement or disability pension is already being paid. The pension benefits settlement will be effected either by dividing the retirement pension or disability pension already being paid at retirement age or by halving the hypothetical vested benefits of a disability pensioner who has not yet reached retirement age.

The amendments regarding the pension benefits settlement on divorce came into effect on 1 January 2017. The new law also applies to divorce proceedings that were still pending before a cantonal court at the time the revision came into effect.

### **Types of pension benefits settlement**

The settlement is conducted in different ways depending on the situation:

- If no insured event (old age, death or disability) has occurred, the pension benefits settlement is conducted as before by dividing the vested benefits equally (see “Settlement of vested benefits”);
- If one spouse is already drawing a disability pension, but has not yet reached the retirement age specified in the pension fund rules, the pension benefits settlement is based on the hypothetical vested benefits to which the disability pensioner would be entitled if no disability pension was being paid (see “Settlement if a disability pension is being drawn prior to the retirement age specified in the pension fund rules”);

- If a pension is being drawn and the claimant has already reached the retirement age specified in the pension fund rules, the pension is divided (see “Settlement if retirement or disability pensions are being drawn after the retirement age specified in the pension fund rules”).

The decisive date for evaluating whether the (hypothetical) vested benefits or the pension are to be split is that on which divorce proceedings are initiated.

Divorce proceedings are initiated by filing a joint or unilateral petition for divorce with the competent court.

### Settlement of vested benefits

Normally, the vested benefits accumulated by both spouses during the marriage are divided equally between

them. In the SVE, these vested benefits (sometimes also referred to as “departure”, “withdrawal” or “termination” benefits) correspond to the available retirement assets (but at least the minimum amount pursuant to Art. 17 FZG).

For each spouse the vested benefits to be divided equal the difference between

- the vested benefits at the time divorce proceedings are initiated and
- the vested benefits at the time of marriage, including the interest earned on these vested benefits up to the time divorce proceedings are initiated.

In other words, the assets (with interest) already accrued at the time of the marriage are not included in the vested benefits that are to be divided.

#### Example

Both spouses are members of an occupational pension scheme. The court decides that the entire pension benefit entitlements are to be divided equally between the two. As both spouses have to split their vested benefits, ultimately the difference between the two entitlements is divided up.

	CHF
Husband's vested benefits at the time divorce proceedings are initiated	300'000
<b>Minus</b> vested benefits at the time of marriage (plus interest earned up to the initiation of divorce proceedings)	150'000
<b>= Increase in husband's vested benefits during the marriage</b>	<b>150'000</b>
Wife's vested benefits at the time divorce proceedings are initiated	200'000
<b>Minus</b> vested benefits at the time of marriage (plus interest earned up to the initiation of divorce proceedings)	100'000
<b>= Increase in wife's vested benefits during the marriage</b>	<b>100'000</b>
Difference CHF 150'000 minus CHF 100'000	50'000
<b>Therefore, half of this amount must be transferred from the husband's pension account to the wife's pension account</b>	<b>25'000</b>

If one spouse has already reached retirement age and is drawing a retirement or disability pension while the other spouse is still entitled to (hypothetical) vested benefits, the pension benefits settlement is achieved by splitting the pension of the respective spouse and dividing the (hypothetical) vested benefits of the other.

If one of the spouses does not have any occupational pension provision, the pension benefit entitlements of the other spouse are divided between the two.

### Settlement if a disability pension is being drawn prior to the retirement age specified in the pension fund rules

If one of the spouses is drawing a disability pension but has not yet reached the retirement age specified in the pension

fund rules, the pension benefits settlement is based on the hypothetical vested benefits to which this spouse would have been entitled if there had been no disability at the time divorce proceedings were initiated.

Unlike retirement pensioners or persons who receive a disability pension after the retirement age specified in the pension fund rules (see the details below on “Settlement if retirement or disability pensions are being drawn after the retirement age specified in the pension fund rules”), it is not the pension that is divided but the continued retirement assets of the disabled insured member = hypothetical vested benefits<sup>1</sup> (each pension fund is obliged by law to continue the retirement account of a disabled insured member to whom it pays a disability pension in case that member re-joins the workforce before retirement age. If disability

<sup>1</sup> You may well ask yourself why the pension is not divided if one of the spouses draws a disability pension before retirement age in the same way that a retirement or disability pension is divided once retirement age has been reached. However, this would lead to a distorted result: when calculating a disability pension, it is assumed

that the insured person would have continued to accrue their occupational pension savings right up to normal retirement age. Therefore, if the disability pension were to be divided, that portion of the pension assets which would have been accumulated up to normal retirement age following the divorce would also be split equally.

ceases, the member is entitled to vested benefits in the amount of the continued retirement assets).

However, the hypothetical vested benefits do not have to serve as the basis for the pension benefits settlement in every case. Partially disabled persons often still have enough “active” vested benefits available to cover the entitlements from the pension benefits settlement. This means that the partial disability pension currently being drawn does not have to be reduced after the pension benefits

settlement has taken place. At the same time, the insured person is also given the opportunity to close the gap caused by the pension benefits settlement by making new purchases. If the spouse drawing a disability pension still has assets in a vested benefits institution, it can also make sense to include these in the pension benefits settlement in order to avoid having to reduce the current disability pension. Therefore, it is imperative that the court or legal representative(s) be informed of any partial disability or of the existence of further pension assets.

#### Example

Both spouses are members of an occupational pension scheme. The husband was already drawing a full disability pension prior to the marriage and continues to do so. The court decides that the entire pension benefit entitlements are to be divided equally between the two. As both spouses have to split their vested benefits, ultimately the difference between the two entitlements is divided. In the opposite case, if the increase in the wife's vested benefits was higher than that of the husband's, thus making the husband entitled to a settlement, the difference would have to be transferred to a vested benefits institution of his choice or to the National Substitute Pension Plan, as the husband is no longer actively insured in the pension fund owing to his disability and is thus unable to buy back the difference under his pension scheme. Because the husband is drawing a full disability pension, however, he can ask for the difference to be paid out to him directly.

In the opposite case, if the increase in the wife's vested benefits was higher than that of the husband's, thus making the husband entitled to a settlement, the difference would have to be transferred to a vested benefits institution of his choice or to the National Substitute Pension Plan, as the husband is no longer actively insured in the pension fund owing to his disability and is thus unable to buy back the difference under his pension scheme. Because the husband is drawing a full disability pension, however, he can ask for the difference to be paid out to him directly.

	CHF
Husband's hypothetical vested benefits at the time divorce proceedings are initiated	300'000
<b>Minus</b> hypothetical vested benefits at the time of marriage (plus interest earned up to the initiation of divorce proceedings)	150'000
<b>= Increase in husband's</b> hypothetical vested benefits during the marriage	<b>150'000</b>
Wife's vested benefits at the time divorce proceedings are initiated	200'000
<b>Minus</b> vested benefits at the time of marriage (plus interest earned up to the initiation of divorce proceedings)	100'000
<b>= Increase in wife's</b> vested benefits during the marriage	<b>100'000</b>
Difference CHF 150'000 minus CHF 100'000	50'000
<b>Therefore, half of this amount must be transferred from the husband's pension account to the wife's pension account</b>	<b>25'000</b>

Depending on how a pension fund's Pension Plan is set up, the disability pension will be either a) permanently reduced following the pension benefits settlement due to the share of hypothetical vested benefits awarded to the other spouse, or b) the impact of the pension benefits settlement will not be felt until later when the disability pension is replaced by a retirement pension.

- a) A reduction in the disability pension will take place following the pension benefits settlement if recourse has to be made to the hypothetical vested benefits that have already been used to finance the disability pension: in other words, if the pension assets acquired at the time entitlement to a disability pension begins in accordance with the pension plan of the pension fund in question are included in the calculation of the

disability pension (“risk benefits” calculated on a defined-benefit basis).

In cases such as this where the continued retirement assets are taken into account in measuring the disability pension, it would be unacceptable if that pension were to remain at the same level as prior to the settlement of pension benefits even though part of the underlying assets have since been withdrawn. The law thus gives pension funds the option of adjusting the disability pension in line with the new circumstances / lower assets by reducing it

accordingly following the pension benefits settlement<sup>2</sup>. However, children's pensions currently being paid at the time divorce proceedings are initiated will not be reduced.

### Example

A man receives a disability pension of CHF 15'000 per annum. His wife has no occupational pension provision of her own. The marriage did not last long and the majority of the husband's pension assets were accumulated in the period before the marriage. The court therefore decides that the wife should be awarded CHF 50'000 from the husband's hypothetical vested benefits (difference between the continued retirement assets at the time divorce proceedings are initiated and the continued retirement assets at the time of marriage). At the time the CHF 50'000 is transferred, the disability pension amounts to CHF 15'000 per annum, as previously mentioned. According to the pension fund rules, the retirement assets on which the calculation of the disability pension is based consist of the retirement assets the insured member had acquired at time entitlement to a disability pension begins plus the sum of the retirement credits for the years remaining until normal retirement age, without interest. The conversion rate used to determine the disability pension was 5.8%. When calculating the disability pension, a reduction in assets of CHF 50'000 leads to a pension that is CHF 2900 (=50,000 x 5.8%) lower per annum. That is why, in this example, the husband's disability pension is reduced by CHF 2,900 from the time the divorce decree enters into effect. Following this reduction, the disability pension comes to just CHF 12'100 per annum.<sup>3</sup>

- b) However, in their pension plans, various pension funds provide for disability benefits which are not measured in accordance with the level of available retirement assets but on a percentage basis, i.e. as a proportion of the insured salary, and are only paid up to retirement age (these are known as "risk benefits" and are calculated on a defined-benefit basis). Thereafter, disability benefits are replaced by a retirement pension assessed on the basis of the continued retirement assets available when retirement age is reached.

With benefits of this kind, the disability pension remains unchanged until retirement age is reached. After retirement age, however, the pension benefits settlement formerly agreed now impacts the retirement pension, as a portion of the retirement assets has been withdrawn in order to execute the pension benefits settlement. The retirement pension is therefore smaller than the disability pension paid up to retirement age.

At the SVE, disability benefits are calculated differently depending on the Pension Plan (see Pension Fund Regulations, art. 31):

In the SVE Classic Pension Plan the disability pension is determined by the retirement assets that the insured member has accrued up to the time their entitlement to a disability pension begins [see a) above] plus a supplement. Following the pension benefits settlement, a corresponding

reduction is made in the disability pension in question (SVE Pension Fund Regulations, art. 46 para. 1(1) and the above example by analogy).

In the SVE Basic, Medium and Premium Pension Plans, the disability pension is generally calculated as a percentage of the insured salary [see b) above]. Thus, as the accrued retirement assets play no part in calculating the disability pension, the disability pension remains unchanged after the pension settlement until the insured member reaches ordinary retirement age. As of that point, the retirement pension which replaces the disability pension is reduced in line with the amount previously transferred to the divorced spouse under the pension settlement.

### Settlement if retirement or disability pensions are being drawn after the retirement age specified in the pension fund rules

If either spouse is drawing a retirement pension or a disability pension **after** having reached the retirement age specified in the pension fund rules, the pension benefits settlement is effected by dividing the retirement or disability pension.<sup>4</sup>

The court determines the portion of the pension that is to be awarded to the entitled spouse, taking into account the duration of the marriage and the pension needs of both parties.

<sup>2</sup> The reduction is calculated in accordance with the pension fund rules which formed the basis for (previously) calculating the disability pension.

<sup>3</sup> Source: Explanations regarding the amendments to the Ordinance on occupational old age, survivors' and disability pension provision (BVV 2) as part of the revised settlement of pension benefits on divorce (SCC revision), p. 7 ff.

<sup>4</sup> Unlike a disabled person who has not yet reached retirement age, it is no longer possible to calculate the vested benefits. As soon as retirement age is reached, benefits ultimately fall due. The retirement assets of the insured member, who has been active until that point,

are converted into a pension; from this time forward, it is not envisaged that the disability pensioner will be reintegrated into the workforce, which would trigger an entitlement to vested benefits. The pension benefit entitlements previously available in the form of vested benefits have now become pension income. In cases like this, the pension benefits settlement is conducted by dividing the disability pension (BBI 2013 4910). The same applies to retirement pensioners. The entitlements to pension benefits previously available in the form of vested benefits have also been transformed into pension income at the time of retirement, which is why the pension benefits settlement is effected by dividing the retirement pension.

Specifically, if a marriage has lasted for many years and had a strong influence on the spouses' employment situation, and if the majority of pension entitlements have been accumulated during that marriage, the court will generally decide to split the entire pension equally between the two spouses.

The share of the pension ultimately awarded to the entitled spouse by the court will then be **converted into a lifelong pension** in accordance with the statutory calculation guidelines by the pension fund of the spouse who is obliged to make the settlement<sup>5</sup>.

The splitting of the pension therefore has the major advantage of conferring on the entitled spouse a **lifelong entitlement** ("lifelong" pension) to a portion of their former spouse's occupational pension. This lifelong entitlement remains in effect regardless of whether the former spouse subsequently dies or the entitled spouse remarries.

The lifelong pension is transferred to the **entitled spouse's pension scheme** by the pension fund of the obligated spouse or **paid out directly**.

### Example

A 70-year-old man receives a retirement pension of CHF 2000 a month, and the pension fund rules set the amount of the survivors' pension at 60% of the current retirement pension. The wife is five years younger than her husband and has no occupational pension provision of her own. The marriage was long-lasting and the majority of the husband's retirement assets were accumulated during that period. The court therefore decides that the entire pension benefit entitlements (in the form of the current retirement pension) are to be divided equally between the two.

The husband thus keeps CHF 1000 of his original retirement pension of CHF 2000. The wife is awarded a share of the pension equalling CHF 1000. This will now be converted into a lifelong pension, equal in value to half of the husband's current retirement pension, which, in this case, comes to CHF 923 a month. The converted lifelong pension of the 65-year-old woman is smaller than half of the husband's current retirement pension because the pension fund has only financed the latter up to the (statistically probable) time of death of the husband along with contingent survivors' pensions. However, since the wife is five years younger than the husband and statistically likely to live longer, the lifelong pension for the wife will probably have to be paid out over a longer period of time than was assumed when the husband's retirement pension was originally calculated.

The exact opposite would be the case if the wife was already 75 years old and not five years younger than the husband, as in the example. The converted pension would then come to CHF 1350 and be considerably higher than the CHF 1000 portion of the pension awarded because the pension fund will probably have to pay the lifelong pension for a shorter period than was assumed.<sup>6</sup>

	CHF
Husband's monthly retirement pension	2000
50/50 split retirement pension	1000
<b>The husband keeps half of his retirement pension</b>	<b>1000</b>
<b>The wife is awarded the other half of the retirement pension as her share of the pension</b>	<b>1000</b>

The pension remains permanently reduced by the share awarded to the other spouse (no buy-back entitlement). However, the division of the pension has no impact on children's pensions which are already being paid at the time divorce proceedings are initiated; i.e. current children's pensions are not reduced.

In all SVE Pension Plans, the disability pension is only paid until retirement age is reached. After that, it is replaced by a retirement pension. Once the retirement age specified in the pension fund rules is reached, in the SVE a retirement pension is always divided instead of a disability pension.

### Promotion of home ownership during marriage

#### Advance withdrawals to finance home ownership

If one of the spouses has made an advance withdrawal to finance home ownership during the marriage, the assets concerned remain earmarked for retirement provision and are included in the division of the pension benefit entitlements, provided no pensions are currently being drawn. Specifically, this means that the amount withdrawn in advance is added to the vested benefits that are to be divided.

Retirement assets which have been invested in residential property do not earn interest. The associated loss of interest is thus allocated proportionally to the vested

<sup>5</sup> The electronic conversion program for converting the portion of the pension that has been awarded into a lifelong pension can be accessed on the website of the Federal Social Insurance Office.

<sup>6</sup> Source: BBI 2013 4912; electronic conversion program of the Federal Social Insurance Office

benefits before the marriage and those during the marriage and divided accordingly (for a sample calculation see Messages of the Federal Social Insurance Office on occupational pension funds, No. 143, margin no. 952).

If an advance withdrawal to finance home ownership was made prior to the marriage, it is not taken into consideration in the vested benefits that are to be divided.

If the pension benefit entitlements of a retirement or disability pensioner are to be divided, then the assets drawn in advance to finance home ownership during the marriage are not taken into account. These funds cease to form part of the occupational pension savings as soon as retirement or disability pensions become payable. A settlement involving occupational pension savings is therefore no longer possible and the obligated spouse must pay the entitled spouse appropriate compensation, by other means, for the amount that was withdrawn in advance.

### **Pledging for home ownership**

If the vested benefits acquired during the marriage have been pledged in whole or in part, they can then only be used for the pension benefits settlement on divorce with the written consent of the pledgee.

Without this, the vested benefits cannot be used for settlement purposes. In this case, the obligated spouse must pay appropriate compensation by other means in lieu of the share of vested benefits.

### **Transferring the vested benefits and lifelong pension**

In its ruling, the court specifies the amount of vested benefits that are to be transferred to the other spouse by way of settlement or the portion of the pension that has been awarded and instructs the competent pension fund to make the transfer once the decision enters into effect.

The pension funds involved are notified of the pertinent points of the legally binding ruling, including the details they require for the transfer of the specified amount. The ruling is binding on these institutions.

The vested benefits or lifelong pension are either transferred to the entitled spouse's pension scheme or paid out

directly. The court ruling must state which form the transfer is to take.

### **Transferring the vested benefits**

If the spouse entitled to a settlement is a member of a pension scheme, the vested benefits will be transferred to the pension fund in question. If that spouse has no occupational pension provision of their own or is already drawing pension benefits from their pension fund, the transfer will be made to a vested benefits institution of their choice or to the National Substitute Pension Plan. If the spouse in question is drawing a full pension from the disability insurance or has already retired, they can ask for the vested benefits to be paid out to them directly. In the case of partial disability, it may be possible to have the vested benefits transferred to their pension fund.

### **Transferring the lifelong pension**

The same applies to the transfer of the lifelong pension, although the following special rules apply:

The spouse entitled to a settlement can request that the lifelong pension be paid out directly if, at the time of the pension benefits settlement, or at a later date, they are entitled to a full pension from the disability insurance (in this case, a claim to benefits within the meaning of occupational pension provision is deemed to have arisen in full) or have reached the earliest possible statutory retirement age (58, with exceptions) for occupational pensions. If the entitled spouse who is drawing a full disability pension does not request a direct payout, the pension payments will be transferred to the National Substitute Pension Plan if no vested benefits institution has been designated (a transfer to the vested benefits institution is no longer possible as the spouse is no longer actively insured under the occupational pension scheme as a result of their total disability).

If the entitled spouse has reached regular statutory retirement age (65 for men, 64 for women) at the time of the pension benefits settlement, the lifelong pension will also be paid out directly<sup>7</sup>. If they reach regular statutory retirement age after the date of the pension benefits settlement, the same will apply from that point onward.

In other cases, the lifelong pension will be transferred to their pension scheme. The transfer of the lifelong pension comprises the pension owed for a calendar year, and the

<sup>7</sup> If it is still possible for the entitled spouse to make payments into their pension fund, they may also request that the transferable lifelong pension be transferred to their pension fund even beyond the regular statutory retirement age of 65 / 64. Payments of this kind may still be permitted under the rules, for example, if the normal retirement age specified in the pension fund rules of this particular scheme has not yet been reached and it is still possible to make purchases. Pension funds sometimes specify a higher normal retirement age, especially for women, by making the retirement age 65 for both men and women. It is also possible that the pension fund may offer the option of continuing cover pursuant to article 33b BVG

if members remain in employment after normal retirement age, thus still enabling purchases to be made (BBI 2013 4947).

Sources: Federal Council dispatch on the amendment of the Swiss Civil Code (pension benefits settlement on divorce) of 29 May 2013, BBI 2013 4887; Federal Council dispatch on the amendment of the Swiss Civil Code of 15 November 1995, BBI 1996 I 100; Explanations regarding the amendments to the Ordinance on occupational old age, survivors' and disability pension provision (BVV 2) as part of the revised settlement of pension benefits on divorce (SCC revision); Messages of the Federal Social Insurance Office on occupational pension funds, No. 143.



law states that it is to be effected by the middle of December each year.

The entitled spouse may also apply for a transfer in the form of a lump sum instead of a pension transfer (see below).

If not already included in the court ruling, the entitled spouse must notify the pension fund that is obliged to make the transfer of the name and full payment address of their pension fund or vested benefits institution.

### **Lump-sum payment in lieu of a lifelong pension**

If the lifelong pension is to be transferred to the pension fund of the spouse entitled to a settlement, the pension fund of the obligated spouse may provide in its rules for the entitled spouse to be given the alternative choice of a transfer in the form of a lump sum. The pension benefits settlement will then be effected in the same way as in the event of divorce, i.e. by transferring the whole amount to the pension fund or vested benefits institution of the entitled spouse (see BBI 2013 4887 ff.)

Among other things, a transfer in lump-sum form has the advantage of dispensing with the annual transfer to the entitled spouse's pension fund, which – depending on the age of the entitled spouse – may be cumbersome and continue for many years. However, once the lump sum has been transferred, all claims on the part of the entitled spouse in relation to the pension fund will be deemed to have been settled.

Nevertheless, the pension fund cannot be forced to convert a pension that is already being paid into a lump sum. The pension fund rules determine whether this is possible. Likewise, the entitled spouse cannot be forced to accept a transfer in lump-sum form.

In its rules, the SVE provides for the possibility of a transfer in lump-sum form (see SVE Pension Fund Regulations, art. 49 para. 4).

When a lump-sum settlement is granted, the spouses have the option, if one of them is already drawing a pension and the other is still actively insured in the occupational pension scheme, of agreeing to offset their claims against each other to (hypothetical) vested benefits or a share of the pension.

### **Exceptions to the equal division of entitlements to pension benefits**

The spouses have the option, in an amicable agreement on the legal consequences of divorce, of waiving their right to an equal division – or even unequal division – or of dispensing with the pension benefits settlement entirely. However, this is only possible provided appropriate provision for old age and disability is ensured in some other manner. The court is responsible for checking whether this is the case.

An alternative amicable agreement of this kind is particularly intended for cases in which neither of the spouses restricted their professional activities during the marriage, meaning there are no disadvantages resulting from the marriage that need to be compensated.

Furthermore, the court may exclude the division of pension benefits entirely or in part if it has important reasons for doing so. One such reason would be if equal division would clearly be inequitable in light of the division of the marital property or the financial circumstances after the divorce.

This would be the case, for example, if one spouse is in paid employment, earns a modest income and is a member of an occupational pension scheme, while the other is self-employed and not a member of an occupational pension scheme but is nevertheless in a much better financial position (BBI 2013 4917 f.).

### **Buy-back following divorce**

The spouse has the option of buying back the amount transferred under the pension benefits settlement in whole or in part by making voluntary purchases of additional benefits using their own funds and thus making good the reduction in occupational pension benefits that has arisen.

On the other hand, there is no buy-back entitlement if the hypothetical vested benefits of a disability pensioner or a share of the pension of a retirement pensioner or disability pensioner who has reached retirement age has been transferred. Both the disability pensioner and the retirement pensioner are no longer actively insured in the pension fund.

However, if a person is only partially disabled and part of their earnings are still actively insured, it is still possible for them to buy back into this active portion following divorce.

### **Providing information to insured members and courts on request**

In the event of divorce, the courts and the divorcing spouses require a variety of information relating to the occupational benefits scheme for the purpose of arriving at the pension benefits settlement.

Accordingly, pension funds are obliged, on request, to provide insured members or the courts with the information required to conduct the pension benefits settlement.

As a rule, only the insured persons in question and the competent courts are entitled to receive such information. The pension fund may only provide information to other persons, including the other spouse and their legal representative(s), if the insured member has issued a power of attorney to this effect. A foreign court may only obtain information about the insured member directly from the pension fund with that member's consent. If no such consent has been granted, it must apply for legal assistance (Messages

of the Federal Social Insurance Office on occupational pension funds, No. 143, margin no. 952).

To receive information of this nature, please contact the SVE customer advisor team.

### **Confirmation that a pension benefits settlement is feasible**

Before the court can approve any agreement between the spouses regarding the settlement of occupational pension entitlements, the spouses must submit confirmation from the occupational pension schemes involved of the feasibility of the agreed arrangement, along with confirmation of the amount of assets or pensions.

Confirmation of feasibility is also required if no agreement is reached between the spouses but the qualifying assets and pensions have been ascertained. In this case, the court decides on the apportionment ratio, determines the amount to be transferred and obtains confirmation of the feasibility of the proposed arrangement from the occupational pension funds involved.

The declaration of feasibility can be requested from the team of SVE customer advisors, indicating the date on which the divorce proceedings were initiated.

### **Divorcing abroad – Foreign rulings**

If jurisdiction for the divorce is conferred on a foreign court or if a foreign court has jurisdiction on the basis of the nationality or place of permanent residence of one of the spouses, it must be noted that foreign rulings on the division of pension assets held in Swiss pension funds in

Switzerland will no longer be recognized following the amendments to the law that came into effect on 1 January 2017.

It has now been determined that Swiss courts have exclusive jurisdiction over the settlement of pension benefits involving a Swiss occupational pension fund. Therefore, if the assets that form the object of the settlement are held in a Swiss pension fund, the settlement procedure must be conducted before a Swiss court.

Consequently, in such cases, the spouses are not allowed to agree on a different jurisdiction; also, foreign rulings on the division of assets held in Swiss pension funds in Switzerland will not be recognized.

In addition to the divorce proceedings conducted abroad, the spouses must now also appear before a Swiss court in separate proceedings in relation to the pension benefit entitlements in Switzerland.

However, the jurisdiction of the Swiss courts is subject to international treaties.

### **Contact your customer advisor for more information.**

The name of the person in charge of your affairs is given in your personal insurance certificate.

Visit our website: [www.sve.ch](http://www.sve.ch)

This website contains interesting information on the SVE.

Sulzer Pension Plan (SVE)  
Your customer advisor team