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Federal Act on the Federal Pension Fund (PUBLICA Act)

of 20 December 2006 (Status as of 1 January 2023)

The Federal Assembly of the Swiss Confederation,

based on Articles 113 paragraph 1 and 173 paragraph 2 of the Federal Constitution¹,
and having examined the Dispatch of the Federal Council dated
23 September 2005²,

decrees:

Section 1 General Provisions

Art. 1 Purpose

This Act governs the organisation of the Swiss Federal Pension Fund (PUBLICA) and defines its tasks and competencies.

Art. 2 Legal form and registered office

¹ PUBLICA is an undertaking of the Swiss Confederation established under public law with separate legal personality.

² Its registered office is in Bern and it is entered in the commercial register.

Art. 3 Tasks

¹ PUBLICA insures employees against the economic consequences of old age, invalidity and death. It provides insurance cover in accordance with the Federal Act of 25 June 1982³ on Occupational Old Age, Survivors' and Invalidity Pension Provision (Occupational Pensions Act) and the Federal Act of 17 December 1993⁴ on the Portability of Occupational Old Age, Survivors' and Invalidity Pensions (Occupational Pension Portability Act). It is entered in the register of occupational pension schemes.

AS 2007 2239

¹ SR 101

² BBl 2005 5829

³ SR 831.40

⁴ SR 831.42

² The Federal Council may assign additional tasks to PUBLICA provided that these bear a direct relation to the remit defined under this Act. The Confederation bears the expenses thereby incurred.

Art. 4 Affiliation

¹ The employers affiliated to PUBLICA are those defined under Article 32*b* of the Federal Personnel Act of 24 March 2000⁵.

² Employers that are closely associated with the Confederation or which fulfil a public task on behalf of the Confederation, a canton or a commune may also be affiliated to PUBLICA. Decisions on affiliation are taken by PUBLICA.

³ An employer is affiliated to PUBLICA by means of a contract of affiliation. The pension plan regulations and the setting of administrative costs form an integral part of contracts of affiliation.

Art. 5 Recourse against liable third parties

PUBLICA is subrogated to the rights of the insured and their survivors against any liable third party up to the amount of the benefits under the regulations. The settlement and scope of this subrogation are governed by Articles 72 to 75 of the Federal Act of 6 October 2000⁶ on General Aspects of Social Security Law.

Art. 6 Data processing

¹ PUBLICA processes those personal details of the insured and their relatives that are required for providing occupational pension insurance.

² If necessary for the performance of its tasks, it may process the following personal data of a sensitive nature:

- a. health-related data;
- b. data pertaining to social welfare and debt enforcement.

³ For the purpose of checking the insured parties' details, PUBLICA may compare its own data, particularly electronic data, with that of Swiss and foreign pension schemes and social security institutions, specifically the Federal Compensation Fund, the Central Compensation Office, the Swiss Compensation Fund, Military Insurance, the Swiss National Accident Insurance Fund (Suva) and the Invalidity Insurance office for insured persons resident abroad.

⁴ The Fund Commission (Art. 10 let. a) governs:

- a. the competency for data processing;
- b. the data retention period;
- c. the organisation and operation of automated systems;
- d. data security.

⁵ SR 172.220.1

⁶ SR 830.1

Section 2 Employee Pension Funds

Art. 7 Formation of employee pension funds

¹ PUBLICA forms a separate employee pension fund for each of its affiliated employers, covering their employees as well as the pensioners assigned to them.

² PUBLICA may form a collective employee pension fund for several affiliated employers.

³ An employee pension fund may also be formed or carried on in cases where an employer is assigned pensioners only. If an affiliated employer wishes to continue an employee pension fund without employees, a new contract of affiliation must be signed.

Art. 8 Actuarial risks

¹ Each employee pension fund bears its own actuarial risks.

² For the employee pension funds taken as a whole, PUBLICA forms:

- a. a provision to be used to offset actuarial fluctuations occurring in the employee pension funds in the risks associated with death and invalidity in cases that cannot be covered by risk premiums; employee pension funds with no employees (Art. 7 para. 3) are excluded;
- b. a provision to be used for benefits in cases of particular hardship.

Art. 9 Joint body

¹ Each employee pension fund has a joint body encompassing representatives of the employer and employees. Employee pension funds consisting only of pensioners are exempt from this obligation if the payment of benefits is guaranteed by the Confederation, a canton or a commune.

² The signing, amendment and termination of a contract of affiliation requires the participation and approval of the joint body.

³ The joint body assumes the tasks and competencies assigned to it under this Act, PUBLICA's rules of business and organisation and the contract of affiliation.

⁴ The employer and its employees designate their representatives within the joint body.

Section 3 Organisation

Art. 10 Governing bodies

The governing bodies of PUBLICA are:

- a. the Fund Commission;
- b. the Assembly of Delegates;

- c. the Management;
- d. the Auditors as defined under Article 53 paragraph 1 of the Occupational Pensions Act ⁷.

Art. 11 Tasks of the Fund Commission

¹ The Fund Commission is the supreme governing body of PUBLICA. It directs PUBLICA and ensures the supervision and control of its business management.

² Specifically, the tasks of the Fund Commission are to:

- a. enter into and terminate contracts of affiliation;
- b. appoint the Management;
- c. designate the Auditors and the expert in occupational pensions;
- d. approve the annual accounts;
- e. take restructuring measures;
- f. rule on the formation of provisions within the meaning of Article 8 paragraph 2;
- g. rule on the creation of collective employee pension funds (Art. 7 para. 2);
- h. designate the internal appeals body provided for under Article 35 paragraph 1 of the Federal Personnel Act ⁸.

³ In particular, the Fund Commission adopts:

- a. the rules of business and organisation;
- b. the principles of the risk management policy;
- c. the policy on provisions and reserves;
- d.⁹ the investment regulations, including the investment strategy (Art. 15 Abs. 2);
- e. the policy on data processing (Art. 6 para. 4);
- f. the policy on costs and expenses;
- g. the model pension plan regulations;
- h. the model contract of affiliation.

Art. 12 Appointment and organisation of the Fund Commission

¹ The Fund Commission consists of 16 members appointed for a tenure of four years.

² The Fund Commission comprises representatives of both employers and employees. The number of representatives from both sides per employee pension fund is determined on the basis of the individual fund's share in PUBLICA's overall policy

⁷ SR **831.40**

⁸ SR **172.220.1**

⁹ Amended in accordance with No I 2 of the FA of 17 June 2011, in force since 1 Jan. 2012 (AS **2011** 5583; BBl **2010** 7059).

reserve. At least one seat is allocated each to the administrative units of the decentralised federal administration as a whole, within the meaning of Article 32a paragraph 2 of the Federal Personnel Act¹⁰ and to the affiliated employers as a whole, within the meaning of Art. 4 paragraph 2 of this Act.

³ The employees' representatives are elected by the Assembly of Delegates.

⁴ The employers designate their own representatives to the Fund Commission. They may decide to group together and designate a collective representative.

⁵ Members of the Fund Commission designated by employees and employers are not required to be insured with PUBLICA.

⁶ The Fund Commission is self-appointed. It may call upon expert consultants and set up committees, whose members need not be on the Fund Commission.

Art. 13 The Assembly of Delegates

¹ The Assembly of Delegates comprises employees of the affiliated employers. It elects the employee representatives to the Fund Commission.

² It may submit proposals to the Fund Commission on all matters concerning PUBLICA.

³ It is informed about the development of business each year by the Fund Commission and Management.

⁴ The Assembly of Delegates comprises eighty members. The number of delegates for each employee pension fund is determined on the basis of that fund's share in PUBLICA's overall policy reserve. Employee pension funds may decide to group together and designate a collective representative to the Assembly of Delegates.

⁵ Delegates are appointed for a period of four years.

Art. 14 Management

¹ The Management runs the day-to-day operations of PUBLICA. It participates in an advisory role in the meetings of the Fund Commission and its committees and may submit proposals. It appoints the staff of PUBLICA.

² The Management and other personnel of PUBLICA are subject to the provisions of the Federal Personnel Act¹¹. Their occupational pension insurance is with PUBLICA.

¹⁰ SR 172.220.1

¹¹ SR 172.220.1

Section 4 **Asset Management and Annual Accounts**

Art. 15¹² Asset management and allocation of investment income

¹ The assets shall be invested in accordance with the risk management policy adopted by the Fund Commission and the related investment strategies.

² The Fund Commission shall determine a separate investment strategy for:

- a. the assets of the employee pension funds pursuant to Article 7 paragraph 1;
- b. the assets of the employee pension funds pursuant to Article 7 paragraph 3;
- c. PUBLICA's remaining assets, in particular the provisions pursuant to Article 8 paragraph 2 and the working capital.

³ The profit or loss on the investment of the assets shall be distributed annually among the individual employee pension funds and to PUBLICA in proportion to their share of the assets and the relevant investment strategy.

⁴ The joint body of each employee pension fund decides on the allocation of the income remaining at the fund's disposal after adding to its statutory provisions and reserves. In the case of employee pension funds pursuant to Article 7 paragraph 3, the Fund Commission decides instead of the joint body.

Art. 16 Balance sheet

¹ PUBLICA manages its employee pension funds according to the principle of balanced accounts within a closed group.

² An individual employee pension fund may depart from the principle of balanced accounts within a closed group if payment of the benefits is guaranteed by the Confederation, a canton or a commune.

Art. 17 Annual accounts

¹ PUBLICA establishes separate accounting records for each of its affiliated employee pension funds.

² Where one employee pension fund represents several employers, PUBLICA may establish separate accounting records for any employers requesting this. The employers bear the additional costs incurred in this respect.

³ The provisions under Art. 8 paragraph 2 are posted on PUBLICA's balance sheet.

¹² Amended by No I 2 of the FA of 17 June 2011, in force since 1 Jan. 2012 (AS 2011 5583; BBl 2010 7059).

Section 5 Transitional provisions

Art. 18 Transfer of the pension relationship

¹ At the time of this Act coming into force, the vested pension benefits under the Occupational Pension Portability Act¹³ are transferred to the insured parties as a lump-sum payment.

² At the time of this Act coming into force, an opening balance sheet is drawn up for PUBLICA and for each employee pension fund. This specifies the assets, liabilities, reserves, provisions and uncommitted funds.

³ Invalidity pensions that originated under the previous law and the supplementary pensions according to the regulations are continued as before. Should the individual prerequisites for benefits change after transfer, the entitlement to benefits will be reassessed in accordance with the provisions in force.

⁴ Insured persons whose rights are governed by Article 71 paragraph 1 of the Ordinance of 24 August 1994¹⁴ on the Federal Pension Fund (Federal Pension Fund Statutes) maintain these rights even after the new law becomes effective. The shortfall in the policy deficit for financing the benefits due at the time of retirement is payable to PUBLICA by the employers in question. These may, in this case, use employers' contribution reserves.

Art. 19 Deficit debt under the Federal Pension Fund Statutes

¹ The Confederation bears the part of the deficit posted in the Federal Pension Fund's final accounts of 31 May 2003, amounting to CHF 11,935,517,302.

² The affiliated organisations that have migrated to PUBLICA from the former Federal Pension Fund owe PUBLICA the amount of their frozen deficit determined during the applicability of the Federal Pension Fund Statutes¹⁵ Organisations that left the Federal Pension Fund before 1 June 2003 do not owe any additional deficit apart from the frozen deficit paid at the time of leaving. The above is subject to the special standards whereby the shortfall in the policy reserve is assumed by the employer.

³ The Confederation may decide to bear all or part of the deficit debt of individual PUBLICA-affiliated organisations with which it is closely associated if such payment would leave the organisation in serious financial difficulty. The Federal Council defines the conditions, limits and details for assuming such debts.

⁴ Employers that left the Federal Pension Fund prior to 1 June 2003 for which no frozen part of the deficit was set during the applicability of the Federal Pension Fund Statutes do not owe any additional deficit apart from that which was calculated at the time of exit and became payable in accordance with Article 59 paragraph 3 of the Federal Pension Fund Statutes. The above is subject to the special standards whereby the shortfall in the policy reserve is assumed by the employer.

¹³ SR 831.42

¹⁴ [AS 1995 533]

¹⁵ [AS 1995 533, 3705; 1999 2451. AS 2004 301 Art. 1]

Art. 20 Settlement and interest of the deficit debts

¹ The Confederation will pay off its deficit debt according to Article 19 paragraph 1 by 31 May 2008.

² The deficit debts of organisations affiliated to PUBLICA must be repaid within a period contractually specified with PUBLICA, which must not exceed eight years after this Act comes into force.

³ The Confederation will pay off the deficit debts assumed in cases of serious financial hardship (Art. 19 para. 3) within five years of the relevant application being fully or partially approved.

⁴ Interest on deficit debts is payable at the technical interest rate applicable to insured persons in active employment.

⁵ The charge resulting for the Confederation from its repayment of the deficit debt is posted under assets on the Confederation's balance sheet and amortised on the profit and loss account of subsequent years.

Art. 21 Abrogation of Confederation guarantees

¹ Subject to the provisions of paragraph 2, all guarantees in accordance with PUBLICA's opening balance sheet, whereby the Confederation assumed the shortfall in the policy reserve in certain cases, are abrogated with retroactive effect. The cases in question are as follows:

- a. if PUBLICA cannot recover by court order the claims against affiliated organisations on the retirement of female members of the entry generation in accordance with Article 74 of the Ordinance of 25 April 2001¹⁶ on Insurance in the Core Plan of the Federal Pension Fund;
- b. if the new rules for voluntary early retirement cannot be implemented on 1 January 2005: until their effective date, but no later than the expiry of any transition period that may have been set;
- c. if there is a legally binding court ruling against PUBLICA or the Confederation, in the case of a claim to pension benefits that originated prior to migration, specifically in the case of legal proceedings underway at the time of migration.

² The guarantee provided by the Confederation within the meaning of paragraph 1, letter c remains applicable in the case of legal proceedings of particular financial consequence. These are rulings that, due to their nature of precedence, require the adaptation of additional insurance conditions and which, by virtue of the amount of the shortfall in policy reserves or the administrative effort generated for PUBLICA in adapting the insurance conditions, entail extraordinarily high costs.

¹⁶ SR 172.222.034.1

Art. 22 Working capital

The Confederation pays PUBLICA a lump sum of 10 million Swiss francs to finance initial operating expenditure required for setting up PUBLICA on 1 June 2003.

Art. 23 Lump-sum payment by the Confederation for the portfolio of pensioners

¹ The Confederation pays PUBLICA, in the form of a lump-sum payment, the amount needed to cover the additional policy reserve requirements resulting from the lowering of the technical interest rate under paragraph 3 applicable to the portfolio of pensioners defined in paragraph 2 on the day on which this Act comes into force.

² The portfolio of pensioners encompasses the recipients of old-age, invalidity and survivors' pensions whose annuities started before the effective date of this Act, including those pensioners who remained with the Federal Pension Fund after their employer exited before 1 June 2003 (closed portfolios of pensioners).

³ The technical interest rate is reduced to 3% for closed portfolios of pensioners and 3.5 % for all other pensioners.

⁴ The amount owed by the Confederation under paragraph 1 is reduced by the amount of the provision formed by PUBLICA for the closed portfolios of pensioners.

⁵ PUBLICA distributes the Confederation's lump-sum payment among the individual employee pension funds, taking account of the different technical interest rates (paragraph 3) and *pro rata* to the policy reserve of their portfolio of old-age, invalidity and survivor pensioners.

⁶ With this lump-sum payment, the Confederation does not assume any employer obligations in relation to the portfolio of pensioners within the meaning of paragraph 2, and specifically also in relation to the closed portfolio of pensioners. Its employer obligations to its own pensioners (Art. 32b para. 1 of the Federal Personnel Act¹⁷ remain reserved).

Art. 24 Formation and dissolution of employee pension funds of closed portfolios of pensioners

¹ The closed portfolios of pensioners have their own employee pension funds; collective employee pension funds may be formed. The Fund Commission takes on the role of joint body. Should these pensioners be transferred to the Confederation's employee pension fund within the meaning of paragraph 4, the joint body of the latter takes on this function.

² The dissolution of an employee pension fund of a closed portfolio of pensioners is governed by the same principles applying to total liquidation. Any surplus of assets is distributed among the remaining employee pension funds *pro rata* to their policy reserves.

³ If the last remaining employee pension fund of closed portfolios of pensioners no longer has any pensioners, and funds remain available after its dissolution, these are

¹⁷ SR 172.220.1

allocated to the Confederation's employee pension fund. If the Confederation has already paid restructuring contributions in accordance with Article 24a, the remaining funds shall be reallocated to the federal budget.¹⁸

⁴ The Federal Council may have the closed portfolios of pensions dissolved prematurely and transfer the remaining pensioners and their pension assets available to its own employee pension fund. Even in this case, the former employers remain responsible for financing any extraordinary cost-of-living adjustments.

Art. 24a¹⁹ Restructuring of the employee pension funds of closed portfolios of pensioners

¹ If the actuarial review of an employee pension fund of a closed portfolio of pensioners (closed employee pension fund) discloses a shortfall as defined in the OPA²⁰ of 5 or more per cent, the Confederation shall pay restructuring contributions into the employee pension fund sufficient to eliminate the shortfall.

² The restructuring contributions shall be requested as part of the subsequent federal budget process following presentation of the annual financial statements for the individual closed employee pension funds.

Art. 25 Guarantee of retirement benefits for the transition generation

All insured persons in employment who have reached the age of 55 but are not yet 65 at the time this Act comes into force are entitled to "grandfathering" rights corresponding to 95 % of the retirement benefits granted at 62 years of age under the existing law, or at least the retirement benefits provided for under this Act. If voluntary early retirement is taken before the age of 62, the guaranteed rights are reduced on an actuarial basis. PUBLICA bears the costs incurred in such grandfathering.

Art. 26 Preparation for switching over to the PUBLICA collective institution

¹ The employers and their employees designate their representatives to the joint body before this Act comes into force.

² The joint body set up in accordance with paragraph 1 takes the necessary measures to ensure that the contract of affiliation and the pension plan regulations can come into force on the day this Act becomes effective.

³ The former Fund Commission under the Federal Pension Fund Act of 23 June 2000²¹ takes all necessary decisions before this Act comes into force. The Fund Commission under this Act must be formed within a period of one year after the effective date of

¹⁸ Second sentence inserted by No I of the FA of 18 March 2022 (Restructuring of the Employee Pension Funds of Closed Portfolios of Pensioners), in force since 1 Jan. 2023 (AS 2022 524; BBl 2021 1582).

¹⁹ Inserted by No I of the FA of 18 March 2022 (Restructuring of the Employee Pension Funds of Closed Portfolios of Pensioners), in force since 1 Jan. 2023 (AS 2022 524; BBl 2021 1582).

²⁰ SR 831.40

²¹ [AS 2001 707, 2004 5265, 2006 2197 Annex No 13, 2007 2821]

this law. Until the new Fund Commission is formed, the former Fund Commission will assume the tasks provided for under Article 11 of this Act.

Section 6 Final Provisions

Art. 27 Repeal of the Federal Pension Fund Act

The Federal Pension Fund Act of 23 June 2000²² is repealed.

Art. 28 Amendment of current legislation

The amendments to current legislation are set forth in the Annex.

Art. 29 Commencement

¹ This Act is subject to an optional referendum.

² The commencement date is set by the Federal Council.

Date of commencement: 1 July 2008²³

Article 26 and Annex (Art. 32*e* (3) and Art. 41*a* para. 1 Federal Personnel Act): 1 May 2007²⁴.

²² [AS 2001 707, 2004 5265, 2006 2197 Annex No 13, 2007 2821]

²³ O of 7 Dec. 2007 (AS 2008 577).

²⁴ FCD of 2 May 2007.

Annex
(Art. 28)

Amendment of Current Legislation

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²⁵ The amendment may be consulted under AS **2007** 2239.