**Information on pension equalisation**

**Preliminary remark**

The "*Pension Equalisation Coffee Round*" was launched by lawyer Jörn Hauß at the beginning of 2022. Since then, it has met regularly on the 1st and 3rd Wednesday of the month as an exclusively online exchange platform. All professions involved in pension equalisation, i.e. lawyers, judges, pension consultants, actuaries and employees of pension providers are involved. This list is not exhaustive. If you are interested in participating, please send an e-mail to:

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The idea of developing a "kick-off letter for pension equalisation" emerged during the coffee round, which would offer important assistance to clients who are often overwhelmed by the consequences of a VA and enable authorised representatives to support their clients in this regard.

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You are cordially invited to participate in the further development of the document. Please send your suggestions to the e-mail address given above.

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# What is pension equalisation?

In pension equalisation, the pension entitlements acquired by the spouses during the marriage are divided by the court, regardless of whether these entitlements arose from work or assets. Both spouses should have the same pension entitlements after the pension equalisation. This sounds simple at first, but is often difficult in practice.

There are many different types of pension entitlements. These include the so-called standard pension schemes (statutory pension insurance, civil servants' pensions, old-age insurance for farmers and professional pension schemes). However, occupational, private, foreign and supranational pension schemes are also included in pension equalisation.

All of these pension schemes differ to a greater or lesser extent. For example, **retirement age**, the amount of the **annual pension adjustment (dynamic)** or the **scope of benefits** (old-age, invalidity and surviving dependants' pensions) may differ. For this reason, the legislator has stipulated that**, as a rule, each individual pension acquired during the marriage should be "shared internally" with its share from the marriage**. This means that the holder of the pension loses half of his or her pension acquired in the respective pension scheme during the marriage and a pension is established in favour of the other spouse from the equalisation value with the pension provider with which the pension to be equalised existed, under the pension conditions on which the pension to be equalised was based

Unfortunately, however, every rule has exceptions:

**Minor pensions**, i.e. very small pensions, **should not be equalised** (§ 18 VersAusglG). The limits are currently €35.35 as a pension amount and €4,242 as a capital value.

**If the equalisation value, i.e. half of the entitlement acquired during the marriage, falls below certain limits (**pension: €70.70, capital: €8,484), occupational pension providers (pension funds, pension funds, direct insurance policies) or private insurance companies can request an "external division". In this case, the equalisation value is transferred as a lump sum to a "target pension provider" to be determined by the person entitled to equalisation (usually the DRV).

# Special features

**I would like to point out a few special features in advance:**

## State and municipal civil servants

> The **pensions of state and municipal civil servants** are shared "**externally**". This means that half of the pension accrued by one spouse during the marriage from these pension schemes is credited to the German Pension Insurance (DRV) in favour of the other spouse. This does not result in any disadvantage for the person entitled to equalisation, as the pension increases (dynamics) of the two pension systems are almost identical on average over many years.

## Federal civil servants, soldiers and federal judges

> Pensions of **federal civil servants, soldiers and federal judges** are shared **internally**, and the person entitled to equalisation thus receives a pension entitlement under civil service law.

## Professional pension schemes

> **The pensions of professional pension schemes,** such as those for doctors, lawyers, architects, etc., are always shared **internally** with the result that the person entitled to equalisation receives a pension within this professional pension scheme in the amount of half of the pension acquired during the marriage, but in these pension schemes the invalidity and survivors' pension is often not paid for the person entitled to equalisation. A supplement to the retirement pension is paid to compensate for this.

## Occupational pensions

> **Company pensions** are usually divided **internally**. The spouse entitled to equalisation then receives half of the pension entitlement acquired during the marriage. The spouse entitled to equalisation then receives half of the pension entitlement acquired during the marriage and acquires the status of a retired employee, i.e. becomes a "company pensioner". Even if the "internal division" of company pensions is the rule, company pension providers occasionally also offer the "external division" of pensions if the statutory limits (currently € 70.70 pension or € 8,484 capital) are exceeded. In these cases, the person entitled to equalisation must check whether the external division leads to an appropriate pension income for them. As a rule, this will be the case if the court obliges the pension provider to pay the equalisation value as a contribution to the statutory pension insurance for the person entitled to equalisation. However, it always depends on the individual case.

## Direct commitments

> However, **company pension entitlements** from so-called **direct commitments** by the employer and from **provident funds** can be divided externally at the request of the pension provider up to a relatively high equalisation value (currently € 90,600). However, the person entitled to equalisation does not receive this amount. Instead, this equalisation amount must be paid into another pension scheme (target pension). As a rule, the statutory pension insurance scheme (DRV) is the appropriate target pension scheme, which usually also offers the prospect of a higher pension from the equalisation value than the pension to be equalised

## Private pension schemes

> **Private pension schemes** are generally divided "internally" if the equalisation value exceeds the limits of €70.70 or €8,484. However, some insurance companies try to circumvent this by offering the person entitled to equalisation - possibly bypassing the authorised representative - to take out a new insurance contract, which then of course has worse conditions than the insurance contract to be divided. Please do not fall for this trick, but inform your legal representative.

## Foreign and supranational pension schemes

> **Foreign and supranational pensions** are not subject to German jurisdiction. In this case, a German court cannot divide such pensions, but can only order the so-called "pension equalisation after divorce" and thus the "pension equalisation under the law of obligations", which is not carried out by the pension providers but by payment by the pension recipient to the spouse. Ask your legal representative to explain this to you. Such entitlements can also be settled or offset so that the entire procedure is concluded once and for all with the divorce.

# Concluding general notes

* After the spouses have completed the questionnaires on pension equalisation, the pension providers will provide information on the pension acquisition during the marriage. You should check the accuracy of this information (period of employment, earnings, etc.) upon receipt.
* **Pension values** provided by the pension providers in the pension information are **generally not comparable with each other** (exception: civil servants' pensions and statutory pension insurance). A pension is only worth as much as you can live on it in old age. **The dynamics of a pension are a key factor determining its value**. Therefore, any comparison on a pension basis is out of the question if the dynamics of the pensions are - as is almost always the case - different.
* The **capital values** of the pensions reported by the pension providers are also only comparable if they have been calculated according to truly standardised criteria - which is almost never the case.
* Finally, it should be borne in mind that **pensions** from different sources may be **subject to different tax and social security contributions**.
* If you are considering an agreement solution in accordance with §§ 6 - 8 VersAusglG and, for example, come up with the idea of exchanging a **house for a pension** by transferring your half of the house to the other spouse and in return the other spouse waives part or all of the equalisation of one of your pensions. In this case, please bear in mind that the transfer of your share of the house is tax and duty-free, but your pension will be paid out in old age subject to tax. If you make an agreement that offsets pension entitlements against each other or against assets, seek expert advice from a lawyer or pension consultant specialising in pension equalisation. **Agreements are always good in family law. But only if they are good.**