

The prudent person and the extension of limits

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The quantitative limits are not as rigid as their wording suggests. Article 50 paragraph 4 BVV 2 allows a fund to extend the investment possibilities beyond the limits if its investment regulations provide for it and if the fund can demonstrate conclusively, in the notes to its annual accounts, that the security and the risk diversification required by the ordinance continue to be ensured. The board must document its reasoning, usually supported by an asset and liability study prepared by an actuary or an investment consultant. A fund that makes use of this possibility thus applies the principle known internationally as the "prudent person rule".¹

This combination of fixed limits and a supervised possibility of extension is characteristic of Swiss regulatory practice. It gives large and sophisticated funds the freedom to invest more heavily in real estate, private markets or equities if their structure permits, while small funds without professional resources remain within the limits. The supervisory authorities examine the reports, but they do not approve them in advance. Responsibility remains with the board. In periods of low interest rates, many funds used the extension to increase their allocation to real estate above thirty per cent, because Swiss residential property offered returns that bonds could no longer deliver.²

The prudent person principle also appears in European law. The IORP Directive, which governs institutions for occupational retirement provision in the European Union, relies on it as the central investment rule and permits member states to impose only limited quantitative restrictions.³ Since Switzerland is not bound by the directive, its pension funds operate exclusively within the national legal framework. The convergence of principles nevertheless means that a German or French observer will recognise the logic of the Swiss rules, even though the Swiss second pillar is far larger in relation to the economy than the occupational schemes of its two northern and western neighbours.

1 Notes

1. On the extension of investment possibilities under Art. 50 para. 4 BVV 2 and the requirement of a conclusive report in the notes to the annual accounts, see the ordinance and the explanations of the Federal Social Insurance Office on the amendment of 2008. To be verified. ↩
2. On the use of Art. 50 para. 4 BVV 2 by pension funds, in particular for real estate allocations above the 30 per cent limit, see the OAK BV reports and the surveys of pension fund asset allocation published by Swisscanto, Complementa and other providers. To be verified. ↩
3. Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORP II), Art. 19 on investment rules and the prudent person principle. To be verified. ↩

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