

Rules & Regulation for partial liquidation of entities affiliated with the Foundation

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1. Goal

- ¹ The present Rules & Regulations govern the conditions required and the applicable procedure for the partial or total liquidation of entities (joint funds or pension funds) affiliated with the Fondation Collective Open Pension (hereafter "the Foundation"). In the case of the total liquidation of the Foundation, the dispositions of Art. 53c and 53d LPP, of Art. 27g and 27h of the OPP2 and 23 LFLP are determining.

2. Conditions required for a partial or total liquidation of an affiliated entity

2.1. Principle

- ¹ In the case of a partial or total liquidation of an affiliated entity, the pension capital of the outgoing insured persons is increased by an individual or collective share of the disposable assets.
- ² In the event of a deficit, the pension capital of the outgoing active ss is individually reduced; the amount of the LPP pension capital must however remain guaranteed.

2.2. The collective right to reserves for securities fluctuations and provisions

- ¹ If several insured persons are transferred together to another pension institution (collective transfer), other than the right to a share of the available assets, there also exists a right to a proportional share of the provisions and securities fluctuation reserves managed at the level of the affiliated entity.
- ² The right to provisions is only accorded in as far as the technical insurance risks are also transferred.

2.3. Conditions required for partial liquidation

- ¹ The conditions required for a partial liquidation are presumed to be met:
 - a. In the case of a significant reduction of active persons insured with employers affiliated to a multi-employer fund or an employer affiliated to a dedicated fund; when this reduction is due to redundancy for economic grounds, and it causes the involuntary departure of a significant proportion of the active persons insured for old-age pensions; or the removal of a significant proportion of the retirement capital of the active persons insured with the affiliated entity;
 - b. In the case of a corporate restructuring of an employer affiliated to a multi-employer fund or of companies affiliated to dedicated fund, when this reduction causes the involuntary departure of a significant proportion of the active person insured insured for old-age pensions, or the removal of a significant proportion of the retirement capital of the active ss with the affiliated entity;
 - c. In the case of partial cancellation of an affiliation convention between an entity and the Foundation or in the case of a cancellation of an affiliation convention by an employer or conventions by various employers to an affiliated entity resulting in a significant reduction of persons insured for the affiliated entity in question when taken over a period of 12 months or, respectively, a reduction of a significant proportion of retirement capital for active persons insured in the affiliated entity in question (the variation in the number of person insureds or the retirement capital is calculated by

comparison of the number of persons insured at the beginning of the defined accounting period and that at the beginning of the next defined accounting period).

- ² A departure of ss in the sense of para. 1 letter a above is determined to be significant if it reaches, in relation to the number of active persons insured of pension funds or their retirement capital prior to the reduction of persons insured, the following proportions:
- Up to 5 persons insured: 2 involuntary departures, but at least 30% of the retirement capital of active persons insured;
 - Between 6 and 10 persons insured: 3 involuntary departures, but at least 25% of the retirement capital of active persons insured;
 - Between 11 and 25 persons insured: 4 involuntary departures, but at least 20% of the retirement capital of active persons insured;
 - Between 26 and 50 persons insured: 5 involuntary departures, but at least 15% of the retirement capital of active persons insured;
 - Over 50 persons insured: involuntary departures of 10% of active persons insured for retirement benefits, but at least 10% of the retirement capital of active persons insured.
- ³ A departure of persons insured in the sense of para. 1 letter b above is determined to be significant if it reaches, in relation to the number of active persons insured of pension funds or their retirement capital prior to the reduction of persons insured, the following proportions:
- Up to 5 persons insured: 1 involuntary departure, but at least 25% of the retirement capital of active persons insured;
 - Between 6 and 10 persons insured: 2 involuntary departures, but at least 20% of the retirement capital of active persons insured;
 - Between 11 and 25 persons insured: 3 involuntary departures, but at least a minimum of 15% of the retirement capital of active persons insured;
 - Between 26 and 50 persons insured: 4 involuntary departures, but at least a minimum of 10% of the retirement capital of active persons insured;
 - Over 50 persons insured: involuntary departures of 5% of active persons insured for retirement benefits, but at least 5% of the retirement capital of active persons insured.
- ⁴ A departure of persons insured in the sense of para. 1 letter c due to the cancellation of one or more membership convention(s) with an entity affiliated with the Foundation is determined to be significant if it touches 10% of active persons insured of the pension fund, but at least 10% of the retirement capital of active persons insured:
- ⁵ The term restructuring refers to measures taken by the employer whose primary objective is not to reduce personnel and the termination of staff. On the contrary, it means organisational measures that arise due to the discontinuation of activities undertaken by the company to date or due to parts of production being transferred to another company.
- ⁶ A partial cancellation of the membership convention occurs when all the active persons insured leave the pension fund and the pension beneficiaries remain.
- ⁷ The date at which the first policyholder involuntarily leaves the company and the affiliated entity, at the company's behest, is taken to be the date of the beginning of the staff reduction process.
- ⁸ The date at which the last policyholder involuntarily leaves the company and the affiliated entity is taken to be the end of this process.

- ⁹ The departure of a policyholder is considered to be involuntary when the working relationship is terminated by the employer. However, this departure is also considered involuntary when, within a time frame of six months after being apprised of staff reductions or restructuration, the policyholder gives notice of termination of their employment contract in order to anticipate termination by the employer, or because they refuse the new employment conditions that they have been offered.

2.4. Condition required for total liquidation

- ¹ The condition required for total liquidation is the total cancellation of an entity's affiliation convention with the Foundation. Total cancellation of the affiliation convention occurs when all insurance relations are involved (active persons insured and pension beneficiaries). However, the execution of a total cancellation may be waived:
- a. When the affiliated entity changes their pension institution completely, taking with it the totality of assets and liabilities, rights and obligations; is not in deficit and a transfer convention has been signed between the new pension institution and the Foundation; or
 - b. When there are no longer any active persons insured or pension beneficiaries in the affiliated entity at the time of cancellation of the affiliation convention.

3. Procedure for the partial or total liquidation

3.1. Recognition and implementation

- ¹ The employer shall inform the Foundation immediately of the staff reduction or corporate restructuration that may incur a partial liquidation. Furthermore, the employer must provide the information needed for the implementation of a possible partial liquidation.
- ² The Foundation Board must ascertain that the conditions for a partial liquidation are present and must also make the decision to proceed with such a liquidation. In particular, they must identify the event that has led to a partial liquidation and the date of the beginning and end of the staff reduction process, or restructuration.
- ³ When the conditions for a partial or total liquidation of an affiliated entity are fulfilled, the Foundation informs the pension fund commission of the entity in question of the facts found and of the next steps to be taken.
- ⁴ Within the framework of the legal provisions and the present Rules & Regulations, the Foundation Board defines:
 - The affiliated entity's available funds;
 - The amount of the possible deficit at the affiliated entity level;
 - The securities fluctuation reserves and provisions at the affiliated entity level;
 - The distribution plan.
- ⁵ The implementation of a partial liquidation may be declined if it is of no interest on an economic level (cf. Art. 3.3 para 6 and Art. 3.6 para 4). The Foundation Board is responsible for deciding whether or not a partial liquidation must be undertaken.

- ⁶ As soon as the distribution plan is established and the decision to implement a partial or total liquidation is taken by the Foundation Board, the Foundation informs the pension fund committee of the affiliated entity concerned of the amount of available assets or the lack of securities fluctuation reserves and provisions to possibly be distributed and the distribution plan as well as the next steps.
- ⁷ When the Foundation Board decides that a partial liquidation must be implemented, it informs all the recipients concerned by the partial liquidation in a timely manner, in a full and appropriate way, setting out all the steps of the procedure.

3.2. Effective date

- ¹ The effective date of the partial liquidation is the date of the balance sheet, meaning December 31, before the beginning of the civil year during which staff reduction or restructuring has commenced. This date is decisive for the calculation of the amount of funds available, or the deficit, or the securities fluctuation reserves and provisions.
- ² The effective date in a case of partial or total cancellation of the affiliation convention is the date of the partial or complete cancellation of affiliation for the calculation of the amount of funds available, or the deficit, or the securities fluctuation reserves and provisions.

3.3. Calculation of available funds or deficit

- ¹ The amount of funds available, or the deficit, of the securities fluctuation reserves and provisions are calculated on the basis of the technical assessment and the commercial balance sheet established according to the Swiss Standard GAAP RPC 26 at the effective date according to the rules of settlement of liabilities of an actuarial nature. They clearly delineate the actual financial status of the affiliated entity.
- ² A provision destined to finance the costs incurred by the partial liquidation procedure (cf. Article 4.1) may also be constituted and deducted. The possible provisional deductions (cf. Article 3.6) for persons insured who have left the Foundation prior to the effective date must also be deducted from the available assets.
- ³ Furthermore, if the partial liquidation results in a significant alteration of the staff structure of the affiliated entity, for example a drop in the ratio between active and retired persons insured, a change in the age distribution or its size, the Foundation may constitute additional technical provisions for the remaining staff made necessary by the new situation on the advice of its expert in occupational pension funds.
- ⁴ The available funds, or deficit, of the affiliated entity also comprise the reserve of contributions by the employer, should the latter cease their activity.
- ⁵ Any significant variation in the assets and liabilities of over 10% between the partial liquidation deadline and that of the transfer of provisions, securities fluctuation reserves and available assets, will give rise to a corresponding adjustment of funds to be transferred.
- ⁶ If it appears clear from the outset that the financial impact of the partial liquidation on the persons insured leaving and the affiliated entity will be negligible or essentially absorbed by the cost of the entire procedure, for example in the case of a very small deficit, the actuarial report may conclude that the partial liquidation will have no effect.

3.4. Distribution between active and retired persons insured

- ¹ The pension capital of active and retired persons insured is the deciding factor in the calculation of the available assets or the deficit.
- ² The group of active persons insured includes, on the one hand, those persons who, during the staff reduction period or corporate restructuring (cf. Art. 2.3) involuntarily leave the affiliated entity as active persons insured (active persons insured departing), and, on the other hand, those who remain in the affiliated entity at the end of the staff reduction or corporate restructuring (active persons insured remaining).
- ³ The group of pensioners comprises all those who remain in the affiliated entity after the staff reduction or corporate restructuring.

3.5. Individual distribution of available assets for persons insured departing and pensioners

- ¹ If, within the framework of the partial liquidation, individuals have a right to available funds, the right of each policyholder departing is determined by a distribution plan established on the basis of one or more distribution keys. The basis of the criteria applicable to the key(s) are to be found amongst the following elements:
 - The age of the recipients;
 - The number of years of service, affiliation or contribution;
 - The amount of pension capital belonging to active persons insured or pensioners;
 - The total of ordinary contributions made by employees during their affiliation with the Foundation (without single payments) and the amount of the pension.
- ² In the choice of the criteria used in the key, the Foundation Board will try to take in to account the origins of the available assets.
- ³ When the pension capital of the active or retired persons insured are used in the key, they can be corrected for all the persons insured: single payments (vested benefits, repurchases, reimbursements of advance payments, contributions following a divorce) or withdrawals (for housing acquisition, following divorce) made during a period of as much as one year (the deadline being the date the partial liquidation takes effect, or that of departure, if that is earlier).
- ⁴ The Foundation Board may also set the minima and maxima. It will also ensure that the rules or distribution do not favour a group or individuals in a way that is manifestly unfair.

3.6. Individual distribution of the share of the deficit of active persons insured departing

- ¹ In the case of a deficit the pension capital of each active departing policyholder may be proportionally decreased. For the calculation, the pension capital is liable to have been previously decreased for all the persons insured: single payments or withdrawals made (cf. Art. 3.5.1 para 3) during a period of up to one year prior to departure. The old age assets according to the Art. 15 LPP may not be reduced and is guaranteed under all circumstances.
- ² When the Foundation Board determines that one of the conditions of partial liquidation is fulfilled and that the affiliated entity finds itself in a position of clear deficit, the Foundation has the right to

provisionally reduce the individual withdrawal amounts. The provisional reduction must be clearly shown as such on the departure statement. Following the closure of the partial liquidation procedure, the Foundation draws up a definite statement and returns the difference, with interest, calculated using the interest rate applied by the new pension fund during the period in question.

- ³ However, if a non-reduced or insufficiently reduced departure payment has already been made, the policyholder in question must return the excess amount paid, including interest calculated at the interest rate applied by the new pension fund during the period in question.
- ⁴ The Foundation Board may waive the repercussion of all or part of the departure amount's deficit in as much as the impact on the degree of coverage of the affiliated entity is negligible. To do so, it will base its decision on the recommendations of the occupational pension plan expert and on the amount of the deficit.
- ⁵ The share of the deficit that can be attributed to the remaining active and retired persons insured in the affiliated entity remains within the latter without individual attribution. If no active or retired persons insured remain within the affiliated entity, the Foundation will declare any deficit to the LPP Security Fund.

3.7. Share of provisions and securities fluctuation reserves

- ¹ In the case of a collective departure, a collective right to technical provisions and the securities fluctuation reserves is added on a pro rata basis, in addition to the individual or collective rights to available funds. The collective contribution to the constitution of securities fluctuation reserves made by the departing persons insured should be taken into account for the calculation of this right. Should the securities fluctuation reserves and provision have been exclusively constituted through contributions or from revenues from the contributions capital remaining in the collective or from contributions by the employer, the right to these funds is not granted.
- ² The right to provisions exists only when the actuarial risks are also transferred.
- ³ The right to securities fluctuation reserves corresponds, on a pro rata basis to the right to pension capital. There exists no collective right to technical provisions and to securities fluctuation reserves when the partial liquidation occurs due to a collective group departure.

3.8. Transfer of rights and their form

- ¹ The share of funds pertaining to the remaining active and retired persons insured remains within the affiliated entity without individual attribution.
- ² In general, the funds pertaining to departing active persons insured are transferred to them individually. If a minimum of 10 persons insured are admitted to another pension fund as a group (collective departure), their share of funds will be made collectively.
- ³ The available funds are transferred individually for individual departures and according to the form (individual or collective) decided by the Foundation Board for collective departures. The provisions and reserves are transferred collectively.
- ⁴ Individual transfers are in principle paid in cash to the new pension fund.
- ⁵ For collective transfers, the choice of payment, whether in cash or by transfer of assets (e.g. by transfer of securities), also lies with the Foundation Board. However, a transfer of assets requires the agreement of the new pension fund.

3.9. Execution of the transfer

- ¹ In the case of an individual departure, the rights of the recipients are treated as vested benefits. The interest due on commitments to persons insured (pension capital of active and retired persons insured) that must be transferred are governed by Art. 2 paras 3 and 4 of the Federal Law on Vesting in Occupational Old-age, Survivors' and Disability Benefit Plans (LFLP) and Art. 7 of the Vesting Ordinance of October 3, 1994 (OLP). If, during the 180 days following the expiration of the deadline for appeal, the Foundation has not been able to make contact with the beneficiary and obtain the necessary information, the amounts will be transferred to the state substitute institution.
- ² No interest is due on uncommitted funds, the provisions and securities fluctuation reserves which must be transferred.
- ³ In the case of a collective departure, a transfer contract may be set up with the new institution(s).
- ⁴ The auditors certify the correct implementation of the partial liquidation in the framework of their annual report.

3.10. Duty to inform and legal rights

- ¹ All the active and retired persons insured of the affiliated entity must be informed in a timely and appropriate manner of the existence and established fact of a partial liquidation, the procedure and the distribution plan.
- ² As soon as the active and retired persons insured receive the information, they have the right to consult the various documents.
- ³ The active and retired persons insured have the right, within 30 days from notification, to lodge an opposition with the Foundation Board, against the conditions required for a partial liquidation as well as the procedure and the distribution plan.
- ⁴ The Foundation Board is obligated to examine the oppositions and to answer in writing. The Foundation Board may require a hearing with the objectors should they decide that it is necessary. If the oppositions are approved, the procedure or distribution plan will be adjusted and the new information sent to all the active and retired persons insured.
- ⁵ In its answer, the Foundation Board must inform the objectors of their rights within 30 days and request the examination of the conditions of partial liquidation, the procedure and the distribution plan by the supervisory Authority.
- ⁶ An appeal against the supervisory Authority's decision may be lodged with the Federal Administrative Court within 30 days. The appeal against the supervisory Authority's decision only has a suspensive effect when so decided by the President of the competent court of the Federal Administrative Court, either proprio motu or at the request of the appellant. Lacking a suspensive effect, the decision of the Federal Administrative Court will only have an effect to the advantage or disadvantage of the appellant. An appeal against the decision of the Federal Administrative Court may be lodged with the Federal Court within 30 days. The appeal against the Federal Administrative Court's judgement only has a suspensive effect when so decided by the investigating judge Federal Court, proprio motu or at the request of the appellant. Lacking a suspensive effect, the decision of the Federal Court will only have an effect to the advantage or disadvantage of the appellant.
- ⁷ The partial liquidation enters into force and may be executed when:
 - No appeal has been lodged;
 - All appeals have been resolved in a consensual manner; or
 - A binding decision has been handed down by the supervisory Authority.

4. FINAL DISPOSITIONS

4.1. Participation in costs

- ¹ Contributions to costs may be billed additionally to the affiliated entity for exceptional expenses incurred within the framework of the partial or total liquidation of this affiliated entity due to experts' reports required for the treatment of oppositions or appeals, etc.

4.2. Situations not covered by the present rules & regulations

- ¹ Situations which are not covered by the present Rules & Regulations will be treated by analogy by the Foundation in compliance with the legal provisions.

4.3. Enactment and adaptation of the rules & regulations

- ¹ The present Rules & Regulations and their subsequent adaptations are enacted by the Foundation Board and must be subject to a decision by the supervisory Authority.

4.4. Version

- ¹ The present Rules & Regulations were drawn up in the French language; they may be translated into other languages.
- ² If there is a discrepancy between the French language version and the translations in other languages, the French version shall be regarded as binding.

4.5. Entry into force

- ¹ The present Rules and Regulations take effect on January 1, 2017.

In the name of the Foundation's Board

The President

Member of the Foundation Board