

Partial Liquidation Regulations

Ruling of 5 May 2020

These Partial Liquidation Regulations are based on Art. 53b and 53d of the Occupational Pensions Act (OPA) and Art. 27g and Art. 27h of the Occupational Pension Ordinance (OPO 2). They regulate the requirements and the procedure in case of a partial liquidation of a pension plan or the Foundation. They also apply to the total liquidation of a pension plan, which is carried out in the same way as a partial liquidation. However, these Regulations do not apply to the total liquidation of the Foundation.

I. PARTIAL LIQUIDATION OF A PENSION PLAN

Art. 1 Facts

1 The partial liquidation requirements have been met if

- a) a considerable reduction in staff numbers is effected, resulting in at least 10 per cent of all of the pension plan's active insured persons involuntarily leaving the Foundation and the active insured persons' pension fund capital being reduced by at least 10 per cent; or
- b) restructuring (consolidation, suspension, sale, outsourcing or other change to current fields of work) of an employer is effected, resulting in at least 5 per cent of all of the pension plan's active insured persons involuntarily leaving the Foundation and the active insured persons' pension fund capital being reduced by at least 5 per cent; or
- c) an affiliation agreement is cancelled, resulting in at least 1 per cent of all of the pension plan's active insured persons involuntarily leaving the Foundation and the pension fund capital of the pension plan's active insured persons being reduced by at least 1 per cent.

² Affiliated employers are obliged to immediately inform the Foundation about facts which could result in a partial liquidation and to provide it with all information required to carry out a partial liquidation.

Art. 2 Reference date

¹ The reference date of the partial liquidation is set based on the end of the staff cuts or the reference date of the termination of the affiliation agreement. The Foundation determines the authoritative time or time frame for determining who is affected, depending on the incident and the insured persons' departures.

² The employer's downsizing plan must be taken into account for determining the start of the considerable reduction in staff numbers or restructuring. If no such downsizing plan exists, the time when the employer informed the employees about the downsizing plans shall be authoritative.

³ The balance sheet date of the partial liquidation shall be deemed to be 31 December of the year which is closest to the time or the start of the time frame or coincides therewith.

Art. 3 Partial liquidation balance sheet

¹ The foundation for the partial liquidation is formed by the partial liquidation balance sheet which must be compiled pursuant to Art. 47(2) OPO 2 (commercial balance sheet in accordance with Swiss GAAP FER 26 and the pension plan's actuarial balance sheet). When drawing up the partial liquidation balance sheet, due consideration must be given to the interest in continuity.

² The actuarially required pension fund capital is determined in accordance with the provisions of the current provision regulations. In justified cases, (for example due to a deterioration in risk structure) and at the recommendation of the occupational pension expert, the Foundation shall be entitled to form new provisions for the remaining inventories in the partial liquidation balance sheet and/or to increase existing provisions. At the recommendation of the occupational pension expert, it shall also be entitled to adjust the actuarial principles (in particular the technical interest rate), provided that this is appropriate, for example due to a change in the insured persons.

³ The required regulatory basis must be created within a reasonable period for new provisions formed in the context of a partial liquidation in cases where current regulations do not allow for such provisions.

Art. 4 Collective departure

A collective departure exists if several insured persons and/or pensioners join the same new pension scheme as a group as a result of restructuring or the cancellation of an affiliation agreement. In all other cases, it involves an individual departure.

Art. 5 Available funds

¹ Available funds can only be entered in the partial liquidation balance sheet if not only the technical provisions but also the fluctuation reserves have reached the target values according to the provision and investment regulations.

² The available funds are recorded as a percentage of the active insured persons' termination benefits and the pensioners' mathematical reserves, which are held in the pension plan concerned, and in line with these reserves are divided up between the departing insured persons and those remaining. In addition, due consideration is given to the contribution which the departing insured persons paid to accrue the available funds. The available funds are distributed amongst the departing insured persons in accordance with the termination benefits and annuity reserves. The calculation is performed as of the reference date of the partial liquidation or as of the date of departure if the latter is before the reference date.

³ The entitlement to the available funds is in principle paid on an individual basis. In case of a collective departure, the Foundation can decide that the available funds must be transferred to the new pension scheme, either fully or partially.

⁴ In the event that after having transferred available funds, the Foundation has to pay a beneficiary pension benefits, the insured person must repay both the termination benefit paid to them and the available funds transferred to them.

Art. 6 Provisions and fluctuation reserves

¹ In case of a collective departure, there is both an entitlement to available funds and a collective pro rata entitlement to technical provisions and fluctuation reserves. When it comes to calculating the entitlement, due consideration must be given to the contribution which the departing insured persons paid to accrue the technical provisions, fluctuation reserves and available funds.

² However, the entitlement to provisions only exists if actuarial risks are transferred.

³ As a rule, the technical provisions are divided in proportion to the corresponding pension capital (termination benefits and/or mathematical reserves). If a technical provision can be individually assigned based on the calculation rule defined in the provision regulations, this code is authoritative for calculating the collective entitlement.

⁴ The entitlement to fluctuation reserves corresponds on a pro rata basis to the entitlement to pension fund capital (termination benefit and/or mathematical reserve). In addition, due consideration is given to the contribution which the departing insured persons paid to accrue the fluctuation reserve.

Art. 7 Offsetting the deficit

¹ If on the authoritative balance sheet date there is insufficient cover pursuant to Art. 44 OPO 2, the termination benefits and annuity reserves of the departing insured persons will be reduced by the percentage of the actuarial gap. The termination benefits and annuity reserve form the basis for calculation.

² However, the retirement assets pursuant to Art. 15 OPA may not be reduced during this process. If due to this restriction a remainder of the deficit to be divided is left over, it will be divided up amongst the departing (or departed) insured persons proportionally to the remaining extra-mandatory parts of the termination benefits and also deducted from the termination benefit, although it is also the case here that the retirement assets are not allowed to be reduced pursuant to Art. 15 OPA.

³ If the full termination benefit and/or the full mathematical reserve has already been transferred, the amount exceeding this figure must be repaid.

⁴ The Foundation can provisionally reduce the individual termination benefits if a partial liquidation is imminent and the pension fund presumably has insufficient cover. The provisional reduction only applies to insured persons who are likely to be affected by the

partial liquidation. It must be expressly referred to as such. After the completion of the partial liquidation procedure, the Foundation will issue a final statement and pay out any difference plus interest. The insured person must repay any termination benefits received which exceed their entitlement including interest.

Art. 8 Significant change to assets or liabilities

If at any stage between the date of the partial liquidation balance sheet and the transfer of the funds to be included, the assets or liabilities fluctuate by more than 5 per cent (as of the annual financial statements in accordance with the annual financial statements checked by the auditors; during the year in accordance with a monthly estimate of the coverage ratio in line with the guidelines of the occupational pension expert), the available funds to be included, the technical provisions and/or fluctuation reserves will be adjusted accordingly.

II. TOTAL LIQUIDATION OF A PENSION PLAN

Art. 9 Facts

The dissolution of the affiliation agreement by an employer, for whom the Foundation has its own pension plan, leads to the total liquidation of this pension plan. A partial liquidation of the Foundation is only carried out in this case if the conditions of Art. 10(c) below are subsequently fulfilled and joint funds are managed at Foundation level.

III. PARTIAL LIQUIDATION OF THE FOUNDATION

Art. 10 Facts

The requirements for the partial liquidation of the Foundation have been met if

- a) a considerable reduction in staff numbers at one or more affiliated employers is effected, resulting in at least 10 per cent of all active insured persons involuntarily leaving the Foundation and the active insured persons' pension fund capital being reduced by at least 10 per cent;
- b) restructuring is carried out at an employer's company, resulting in at least 5 per cent of all active insured persons involuntarily leaving the Foundation and the active insured persons' pension fund capital being reduced by at least 5 per cent;
or
- c) one or more affiliation agreements are cancelled, resulting in at least 1 per cent of all active insured persons leaving the Foundation and the active insured persons' pension fund capital being reduced by at least 1 per cent.

Art. 11 Funds to be included

¹ A partial liquidation of the Foundation will only be carried out if joint funds are managed at Foundation level.

² In the event of termination of an affiliation agreement, the pro rata entitlement to available funds, technical provisions and fluctuation reserves exists only to the extent to which a purchase was made in these items when the affiliation agreement was concluded; and further to the extent to which these items were additionally accrued during the term of the affiliation agreement.

IV. PROCEDURE

Art. 12 Execution

The Foundation Board is responsible for executing the partial liquidation of a pension plan and the partial liquidation of the Foundation.

Art. 13 Departing insured persons

¹ For checking whether the conditions for partial liquidation are met in accordance with Art. 1(1 a-c) and Art. 10(a and b), only involuntary departures will be taken into account.

² An involuntary departure within the meaning of this provision is if the employment relationship of the active insured person is terminated by the employer and no reasonable job is offered to them or if the active insured person terminates themselves in order to pre-empt a termination by the employer. The involuntary departure must be related to the substantial reduction of the workforce or the restructuring where its content is concerned.

³ Involuntary departures, which occur for another reason (termination of a temporary employment relationship, termination for disciplinary reasons or due to poor performance) and transfers to the portfolio of pensioners due to early or ordinary retirement, death or disability are not to be taken into account for determining the departing insured persons.

Art. 14 Examination and decision

¹ In the event of indications of corresponding events or on the basis of the notification of an affiliated employer, the Foundation will examine whether the requirements for partial liquidation have been met and which time frame and reference date have to be taken into account where this is concerned. On the basis of the regulatory foundations, it decides on the available funds and the share to be distributed, as well as the distribution plan or the actuarial deficit and its allocation.

² The partial liquidation is based on the partial liquidation balance sheet, based on which the available funds to be individually or collectively distributed, the technical provisions and the fluctuation reserves are determined.

³ In case of insufficient cover, the Foundation will waive the execution of a partial liquidation if the actuarial deficit is fully covered by the affiliated employer as of the partial liquidation reference date and transferred to the Foundation. In this case, the termination benefits will be paid in full.

Art. 15 Information

¹ The insured persons concerned will be informed about the partial liquidation in good time. The information comprises the following aspects: the existence of the partial liquidation and the reason for it, the time (reference date) of the partial liquidation, total available funds or total deficit, the departing insured persons and funds allocation formula, where applicable the amount allocated to or deducted from the person concerned in Swiss francs, the amount and composition of any collectively transferred technical provisions and fluctuation reserves, the form of transfers (individual or collective) and legal protection.

² If the information is provided about the affiliated employer, they are obliged to forward the above information to all of their insured persons and pensioners within three working days.

³ The insured persons have the opportunity to view the relevant commercial and actuarial balance sheet and the distribution plan.

Art. 16 Legal protection

¹ Within 30 days of receipt of the information, the insured persons concerned can lodge a written and justified appeal with the Foundation. The appeal shall contain a brief description of the facts, a clear prayer for relief and the reasons for it; evidence shall be labelled and, if at all possible, submitted. If the petition does not meet the requirements, a reasonable deadline for improvement will be set, with the threat that the appeal will not be considered otherwise. The Foundation shall make a decision on the appeal within a reasonable period of time.

² The insured persons concerned have the right to have the prerequisites, the procedure and the distribution plan reviewed and decided on by the cantonal supervisory authority within 30 days of receipt of the appeal decision (Art. 53d(6) OPA).

³ An appeal against the decision of the supervisory authority can be lodged with the Federal Administrative Court within a period of 30 days (Art. 74 OPA). The appeal only has suspensive effect by court order.

Art. 17 Implementation

¹ Partial liquidation may be carried out if no appeal has been lodged within the 30-day deadline; if written confirmation from the supervisory authority has been submitted stating that no requests for review have been received within 30 days of the opening of an appeal decision; if a non-appealable decision has been made by the competent supervisory authority or if no suspensive effect has been granted to an appeal to the Federal Administrative Court against the decision of the supervisory authority.

² The partial liquidation is presented in the annual financial statements following implementation and is explained in the corresponding Notes. The auditors will examine and confirm the implementation of the partial liquidation as part of the ordinary audit report.

Art. 18 Treatment of pensioners in the event of a collective departure

¹ In the event of termination of an affiliation agreement or restructuring following the outsourcing of a field of work, the pensioners affiliated to the pension plan or assigned to the employer, together with the active insured person, shall depart from the Foundation. Before the partial liquidation can be carried out and the departing insured persons can be released from the Foundation, the new pension scheme must confirm that it will take over the pensioners on the same terms.

² If pensioners transfer to a new pension scheme, the entitlement to technical provisions, fluctuation reserves and available funds also exists, mutatis mutandis, for the transferees entitled to a pension. However, the entitlement to provisions only exists if the provisions were also calculated on the annuity reserve and provided that technical risks were transferred. The pro rata entitlement is calculated on the basis of the pension fund capital of the transferring pensioners.

³ In the event of insufficient cover, the Foundation may issue regulations in the transfer contract on the offsetting of the deficit which differ from Art. 7 in the context of the transfer of annuity reserves.

Art. 19 Form of transfer

¹ The transfer of funds is usually in the form of a cash payment.

² In the case of the transfer of collective funds, the Foundation may also fulfil its obligations by transferring securities and/or properties in agreement with the receiving pension plan.

³ In the case of a total liquidation of a pension plan, the departing pension plan may decide whether the existing investments should be transferred physically or whether the liquidation value of the existing investments should be transferred in cash.

Art. 20 Interest rates

¹ The entitlements to available funds, technical provisions and fluctuation reserves are not subject to interest during the period of the partial liquidation procedure (including any review and appeal procedures until such time as the decision becomes non-appealable). 30 days after the completion of the partial liquidation procedure (or non-appealability of a supervisory authority's decision), the obligation to pay default interest shall apply. The default interest amounts to 1 per cent.

² The termination benefits and mathematical reserves of the departing insured persons shall be subject to interest at a default interest rate of 1 per cent after the due date.

Art. 21 Costs

The costs for the implementation of the partial liquidation (including extraordinary expenses in connection with the handling of appeals and complaints, etc.) shall be charged by the Foundation to the affiliated employer who initiated the partial liquidation procedure.

V. FINAL PROVISIONS

Art. 22 Effective date

¹ The present Partial Liquidation Regulations were adopted at the meeting of the Foundation Board on 5 May 2020. They replace the partial liquidation regulations dated 4 April 2011, which were put into effect by the supervisory authority (ASVS, today BBSA) by order of 29 July 2011. It enters into force with the approval of the supervisory authority as of the date of the decision of the Foundation Board.

² The 2011 partial liquidation regulations shall continue to apply to partial liquidation facts with the reference date prior to the entry into force of the present Partial Liquidation Regulations.

³ Upon request, the partial liquidation regulations will be handed over to the active insured persons and pensioners.

Art. 23 Amendments

The Partial Liquidation Regulations may be amended by the Foundation at any time, subject to approval by the supervisory authority, in the context of the statutory regulations and the purpose of the Foundation.

Art. 24 Gaps

Where these Partial Liquidation Regulations contain no regulation or incomplete regulation, the Foundation Board shall, on a case-by-case basis, issue a regulation corresponding to the law and the foundation certificate.

Bern, 5 May 2020

On behalf of the Foundation Board:

Urs Kiener
President

Eric Wiesmann
Vice President

These Partial Liquidation Regulations are issued in German, French, Italian and English. In case of any interpretation issues, the German text of the Partial Liquidation Regulations shall be authoritative.