PensUnit

Partial Liquidation Regulations

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Your tailor-made Bel-étage pension solution

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General Provisions

1. Purpose and applicability

These Partial Liquidation Regulations define the requirements and the procedure in the event of the partial liquidation of the Foundation and of its affiliated pension funds. Decisions on facts and situations which are not expressly governed under these rules will be taken by the Foundation Board within the meaning of these rules as well as the applicable, statutory provisions.

Partial liquidation of the Foundation

2. Requirements for a partial liquidation of the Foundation

The requirements for a partial liquidation of the Foundation are met, if:

a. an affiliation agreement with an employer is terminated, providing the pension assets of the departing pension fund totals at least 7.5% of the Foundation's total pension assets; or
b. the number of insured persons is reduced by at least 7.5% within a calendar year as the result of the termination of the affiliation agreements and this reduces the Foundation's total pension assets by at least 7.5%; or
c. the number of members of an affiliated employer or several affiliated employers falls significantly, leading to the departure of at least 7.5% of the insured persons from the Foundation and to the transfer of at least 7.5% of the pension capital of the insured persons on the Foundation level; or
d. the company of an affiliated employer is being restructured, or the companies of several affiliated employers are being restructured, leading to the departure of at least 5% of the insured persons from the Foundation and to the transfer of at least 5% of the pension capital of the insured persons on the Foundation level.

3. Determination of the partial liquidation

The decision on whether the requirements for a partial liquidation in accordance with the provision of these rules are met, by the Foundation Board.

4. Effective date of the partial liquidation

The effective date of the partial liquidation is set at the 31 December nearest to the date on which the requirements for a partial liquidation were met.

5. Consequences of the partial liquidation

5.1 The partial liquidation only affects the pension fund which is leaving the Foundation. In addition to its claim for the amount of its pension assets on the effective date of the partial liquidation, the departing pension fund is entitled to a portion of the freely disposable funds or deficit and to a portion of the Foundations' actuarial provisions and fluctuation reserves which have been accumulated with the help of contributions from the pension fund.

5.2 If the qualifying assets or liabilities of the Foundation change by at least 10% between the effective date of the partial liquidation and the date of transfer of the funds, the amount of the freely disposable funds being transferred must be adjusted accordingly. The same also applies for the collective claims to actuarial provisions and fluctuation reserves.

5.3 The procedural provisions set out below also apply accordingly to a partial liquidation of the Foundation.

Partial liquidation of a pension fund

6. Requirements for a partial liquidation of a pension fund

6.1 The requirements for a partial liquidation of a pension fund are met, if:

a. the number of members of an affiliated employer falls significantly, leading to the departure of a substantial number of insured persons from the pension fund or to the transfer of a significant portion of the pension capital of the insured persons; or
b. the company of an affiliated employer is being restructured, leading to the departure of a substantial number of insured persons from the pension fund or to the transfer of a significant portion of the pension capital sums of the insured persons; or
c. the employer's affiliation agreement with the Foundation is terminated.

6.2 Departure in this case means that an insured person leaves the pension fund before a benefit claim arises.

6.3 Restructuring as understood by these rules is organisational measures on the part of the employer, the prime aim of which is not to cut the number of jobs or to the dismissal of employees, but to cease activities in which the employer's company had been previously engaged, or to transfer whole areas of the employer's company to others.

6.4 A reduction in the employee numbers as understood by this provision is deemed significant, if the number of insured persons who leave the pension fund, or the total pension capital which are transferred out of the pension fund within a 12 month period reaches the following level:

a. at least 2 insured persons or 30% of the pension capital in pension funds with a maximum of 5 insured persons prior to the reduction in employee numbers,
b. at least 3 insured persons or 25% of the pension capital in pension funds with 6 to 10 insured persons prior to the reduction in employee numbers,
c. at least 4 insured persons or 20% of the pension capital in pension funds with 11 to 25 insured persons prior to the reduction in employee numbers,

d. at least 5 insured persons or 15% of the pension capital in pension funds with 26 to 50 insured persons prior to the reduction in employee numbers,
e. at least 10% of the insured persons or 10% of the pension capital in pension funds with over 50 insured persons prior to the reduction in employee numbers.

6.5 A restructuring as understood by this provision is deemed to be, if the number of insured persons who leave the pension fund, or the total pension capital, which are transferred out of the pension fund within a 12 month period reaches the following level:
a. at least 2 insured persons or 20% of the pension capital in pension funds with a maximum of 10 insured persons prior to the restructuring,
b. at least 3 insured persons or 14% of the pension capital in pension funds with 11 to 50 insured persons prior to the restructuring,
c. at least 8% of the insured persons or 8% of the pension capital in pension funds with over 50 insured persons prior to the restructuring.

6.6 The commencement of the reduction in employee numbers or the restructuring is the date of departure by the first insured person who has to leave the company and the pension fund on the decision of the employer. The end of the reduction in employee numbers or the restructuring is the date of departure by the last insured person from the company and the pension fund.

7. Reporting and cooperation obligations of the employer and the Pension Fund Commission

The employer and the Pension Fund Commission must notify the Foundation immediately of any circumstances that could lead to a partial liquidation of the pension fund.

8. Determination of the requirements for a partial liquidation

The Foundation is responsible for determining whether the requirements for a partial liquidation of a pension fund are met, as well as for the implementation of the partial liquidation process. The employer and the Pension Fund Commission must provide the Foundation, without delay, with all the information required for the fulfilment of its duties.

9. Effective date of the partial liquidation

9.1 The effective date of the partial liquidation is definitive for:
a. determining the group of insured persons who are affected by the partial liquidation; and
b. the calculation of the freely disposable funds or deficits as well as actuarial provisions and fluctuation reserves of the pension fund, taking into account Art. 6 and Art. 11.2

9.2 The effective date of the partial liquidation is set at the 31 December nearest to the date on which the requirements for a partial liquidation were met.

10. Calculation of the freely disposable funds or deficit

The determination of the freely disposable funds or deficit, as well as actuarial provisions and fluctuation reserves of the pension fund, is made on the basis of the commercial and technical balance sheet of this pension fund which the Foundation will arrange to be drawn up as at the effective date of the partial liquidation. The freely disposable funds or deficit are calculated in accordance with the Swiss GAAP FER 26 accounting regulations on the basis of:

a. the pension assets of the pension fund, the elements of which are determined based on the sale values on the effective date of the partial liquidation;
b. the liabilities of the pension fund, specifically:
   the pension capital required for actuarial reasons on the effective date of the partial liquidation, including the necessary actuarial provisions which are to be applied to the actuarial liabilities on the basis of the Foundation's corresponding regulations.

11. Group of insured persons

11.1 In the event of a partial liquidation, the freely disposable funds or deficit will be distributed between the remaining and the departing beneficiaries.

11.2 In the event of a reduction in the number of employees or a restructuring, the remaining beneficiaries comprise the total number of insured persons (active insured persons and pension recipients) on the day after the date of the departure of the last insured person to leave the company and the pension fund as part of the liquidation.

11.3 The departing beneficiaries comprise the following insured persons (active insured persons and pension recipients):

- in the event of a reduction in the number of employees or a restructuring: all the insured persons leaving the pension fund between the date of commencement to the date of the end of the reduction in the number of employees or restructuring;
- in the event of a termination of the affiliation agreement: all beneficiaries (incl. any departing pension recipients) leaving the pension fund as a result of the termination of the affiliation agreement. Insured persons who have been a member of the pension fund for less than one year are not taken into consideration when drawing up the distribution plan.

12. Claims to the available freely disposable funds

a. Basic principle
   The beneficiaries from the distribution plan acquire a claim to a portion of the freely disposable funds, if such funds exceed 5% of the total pension capital of the pension fund on the effective date of the partial liquidation.
b. Forms of allocation
   As a general rule, the freely disposable funds are allocated on an individual basis. However, the Foundation can decide to grant a collective claim to the freely disposable funds in the event of a collective departure in accordance with Para. 13 a.

13. Collective claim to actuarial provisions and fluctuation reserves

a. Basic principle
A collective departure applies, if at least 5 insured persons transfer together as a group to another pension fund institution. In the event of a collective departure, in addition to the claim to the freely disposable funds, there is also a collective, proportional claim to the technical provisions and fluctuation reserves.

b. Conditions
The claim to the actuarial provisions of the pension fund only applies insofar as actuarial risk are also transferred. The claim to fluctuation reserves corresponds proportionately to the claim to the pension and cover capital.
No collective claim is recognised, if the partial liquidation has been caused by the departing group of insured persons.

c. Amount
When calculating the proportional claim to the actuarial provisions and fluctuation reserves of the pension fund, appropriate account must be taken of the contribution made by the departing group to the build-up of the technical provisions and fluctuation reserves.

d. Forms of allocation
The collective claim to actuarial provisions and fluctuation reserves is in any event transferred on a collective basis to the new pension fund institution.

14. Offsetting the actuarial deficit

14.1 If one of the requirements for a partial liquidation arises, the actuarial deficit that was calculated as at the effective date of the partial liquidation is deducted, in whole or in part, from the transferred departure benefits.

14.2 The actuarial deficit is determined in accordance with Article 44 BVV 2/OPP 2 as at the effective date of the partial liquidation, with any employer contribution reserves, with waiver of use, being included in the calculation of the technical deficit. Any deduction will always be made individually from the termination benefit.

14.3 If the termination benefit has already been transferred without deduction or without a sufficient deduction, the insured person must repay the excess amount transferred.

15. Allocation of the freely disposable funds or deficit

The individual share of the freely disposable funds or deficit is determined gradually:

a. The pool of insured persons (active insured persons and pension recipients) are divided into a continuing pool (remaining insured persons) and a departing pool (departing insured persons);
b. the freely disposable funds or deficit will be shared between the insured persons (active insured persons and pension recipients) proportional to the pension or cover capitals of the remaining insured persons and the departing insured persons;
c. the freely disposable funds or the deficit are allocated to the departing insured persons in accordance with a distribution plan which is based on the following criteria:
   - on the pension capitals (pension recipients);

- on the individual termination benefits (active insured persons), which will be adjusted for active insured persons pro rata temporis by the deposits (vested benefits and purchases) and withdrawals (advance withdrawals and divorce if the latter has a
- value date which is not more than 12 months prior to the effective date of the partial liquidation;
- length of membership of the Foundation

d. for the remaining insured persons (active insured persons and pension recipients) the freely disposable funds or deficit will be recorded without individual allocations.

e. If there is a change of at least 10% in the key assets or liabilities of the pension fund between the effective date of the partial liquidation and that of the transfer of the funds, the freely disposable funds or deficit to be transferred must be adjusted accordingly. The same also applies for the collective claims to actuarial provisions and fluctuation reserves.

16. Information for the insured persons (active insured persons and pension recipients)

16.1 If the requirements for a partial liquidation are met and the corresponding procedure applies, the Foundation will inform the insured persons about the partial liquidation in writing.

16.2 In particular, it will inform them of the date and the reasons for the partial liquidation, the amount and their entitled share of the freely disposable funds or deficit and the actuarial provisions and fluctuation reserves. The insured persons will be informed that, within thirty days after date the information is sent by the Foundation, they have the option:

- to inspect view the definitive commercial balance sheet, technical balance sheet and the distribution plan at the registered offices of the Foundation; and
- to appeal in writing to the Foundation against the requirements, the procedure and the distribution plan.

16.3 In the latter case, the Foundation will rule on the appeal from the insured person and notify notify him/her of its opinion in writing.

16.4 It will be explained to the insured person that he/she has the right, within thirty days after receipt of the reply from the Foundation, to have the requirements, the procedure and the distribution plan subject to a review and decision by the supervisory authority.

16.5 The decision by the supervisory authority will be notified to the insured person who can lodge an appeal with the Federal Administrative Court within thirty days of service of the decision by the supervisory authority.

16.6 An objection to the decision by the supervisory authority will only have a suspensory effect, if the President of the competent department of the Federal Administrative Court or the judge presiding over the proceedings issues an ex officio ruling in this respect at the request of the complainant. If no suspensory effect is granted, the decision of the Federal Administrative Court will only be in favour or against the appellant.

16.7 The Foundation will implement the distribution plan as soon as it has become legally binding.

16.8 It can, if necessary, make payments on account, if an appeal is pending against the decision by the supervisory authority on the distribution plan.

17. Execution

The distribution plan can be executed if

a. within the 30 day period, no appeal is made to the Foundation Board or any such appeal was able to be resolved;
b. no request has been made by the supervisory authority for a review of the Foundation Board's appeal decision;
c. any ruling by the supervisory authority has acquired legal force;
d. an appeal lodged against the ruling is not granted any suspensory effect.

18. Cost sharing

Contributions towards the costs for the expenses incurred in connection with the partial liquidation of a pension fund, as well as for the expert opinions in connection with the settlement of appeals and complaints, will be invoiced in accordance with the Cost Regulations.

19. Interest

No interest will be paid on the claims to freely disposable funds, actuarial provisions and fluctuation reserves during the partial liquidation procedure. Once the procedure has concluded, arrears interest becomes payable on expiry of 30 days. The arrears interest equates to the BVG/LPP minimum interest rate.

Formal procedure

20. Procedure for gaps in the regulations

Insofar as these rules contain no provisions for special situations, the Foundation Board will draw up a provision that ref lects the purpose of the Foundation.

21. Binding language

German is the definitive language for the interpretation of all regulations.

22. Amendments to the rules

The Foundation Board can decide to amend the Partial Liquidation Regulations at any time. The amendment must be approved by the supervisory authority.

23. Jurisdiction and applicable law

The rules are subject to Swiss law.
The Federal Administrative Court has jurisdiction over complaints against rulings by the supervisory authority in accordance with Art. 74 BVG/LPP (see Art. 16).

24. Transitional provision

The rules valid on the date the situation triggering the partial liquidation occurred shall apply.

Effective date

These rules come into force with effect from 1 October 2018 after being approved by the supervisory authority.

Lucerne, 5 September 2018 Foundation Board of the PensUnit Collective Foundation

PensUnit Collective Foundation
Kauffmannweg 16 6003 Lucerne
Phone +41 41 226 15 15
www.pensunit.ch welcome@pensunit.ch