

Partial liquidation regulations Swisscanto 1e Collective Foundation

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Swisscanto
1e Collective
Foundation

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A Purpose and content

Art. 1 General provisions

1.1 Basic principles

Based on Art. 53b and d of the Swiss Federal Act on Occupational Old Age, Survivors' and Invalidity Pension Provision (OPA), Art. 27g to h of the Ordinance on Occupational Old Age, Survivors' and Invalidity Pension Provision (OPO 2) as well as Art. 18a and 19 of the Swiss Federal Act on the Vesting of Occupational Old Age, Survivors' and Invalidity Benefits (VBA), the Board of Trustees of Swisscanto 1e Collective Foundation (hereinafter: the Foundation) issues the following regulations.

1.2 Purpose

These regulations govern the conditions and the procedure for partial liquidation.

1.3 Basic principle

The Foundation is structured in such a way that there are no reserves for fluctuations in asset value, nor do any actuarial reserves need to be formed for death and disability risk benefits due to those risks being reinsured. Accordingly, in the event of a partial liquidation of the Foundation as well as a partial liquidation of a pension fund, the available individual savings capital is normally included. In exceptional circumstances, this basic principle shall not apply to a partial liquidation of the Foundation or the partial liquidation of a pension fund, in accordance with the following provisions.

1.4 Pension fund level

Each affiliated employer has its own pension fund within the Foundation. These pension funds cover both the active insured persons as well as people drawing a disability or survivors' pension from the affiliated employer. The accumulation of non-actuarial reserves and free funds at pension fund level is organised according to the Regulations on the Formation of Provisions and Reserves.

1.5 Foundation level

The accumulation of non-actuarial reserves and free funds at Foundation level is organised according to the Regulations on the Formation of Provisions and Reserves.

B Partial and full liquidation of a pension fund

Art. 2 Basic principles and conditions for the partial liquidation of a pension fund

2.1 Basic principle as per Art. 18a and 19 FZG and Art. 53d BVG

In the event of the partial liquidation of a pension fund, there is an individual or collective entitlement to a portion of the pension fund's free funds in addition to the entitlement to regulatory termination benefit. If there is a shortfall, the missing amount is deducted proportionally from the termination benefit of the active insured persons and/or pension capital of the pensioners.

2.2 Conditions for a partial liquidation

The conditions for a partial liquidation are met when:

- a. there is a significant reduction in the workforce (see para. 4), or
- b. a company is restructured (see para. 5), or
- c. an affiliation agreement is partially dissolved (see para. 7).

2.3 Relevant group of persons

Involuntary departures are taken into consideration for the partial liquidation. A departure is deemed involuntary when the employment relationship of an insured person is terminated by the employer and the person is not offered a reasonable alternative position. A departure is also involuntary when an insured person resigns in order to preempt imminent termination by the employer. The following do not count:

- a. voluntary departures unrelated to the planned staff reduction and the expiry of fixed-term employment contracts,
- b. departures for disciplinary reasons, performance reasons or good cause in accordance with Art. 337 Swiss Code of Obligations (CO) (termination with immediate effect),
- c. retirement, disability or death.

2.4 Significant reduction

A reduction in the workforce is significant when the reduction in active insured persons exceeds the following thresholds:

- 1 to 5 active insured persons: minimum reduction of 2 persons and a minimum of 40% of the savings capital,
- 6 to 10 active insured persons: minimum reduction of 3 persons and a minimum of 30% of the savings capital,
- 11 to 25 active insured persons: minimum reduction of 4 persons and a minimum of 20% of the savings capital,
- 26 to 50 active insured persons: minimum reduction of 5 persons and a minimum of 15% of the savings capital,
- 50 active insured persons and over: minimum reduction of 10% of active insured persons and a minimum of 10% of the savings capital.

These reductions can also be spread over an extended period (see para. 6).

2.5 Restructuring of a company

A company is deemed to be undergoing restructuring when operational areas are outsourced, reorganised or closed. A partial liquidation will ensue in the event of a staff reduction on the following scale:

- 1 to 5 active insured persons: minimum reduction of 1 person and a minimum of 30% of the savings capital,
- 6 to 10 active insured persons: minimum reduction of 2 persons and a minimum of 20% of the savings capital,
- 11 to 25 active insured persons: minimum reduction of 3 persons and a minimum of 15% of the savings capital,
- 26 to 50 active insured persons: minimum reduction of 4 persons and a minimum of 10% of the savings capital,
- 50 active insured persons and over: minimum reduction of 5% of active insured persons and a minimum of 5% of the savings capital.

2.6 Time period and relevant group of persons

The relevant time period for determining the group of persons is 12 months, for staff reductions in stages. If the staff reduction plan itself involves a longer or shorter period, that period is the decisive one.

2.7 Partial dissolution of an affiliation agreement

In the event of the partial dissolution of an affiliation agreement, the condition for partial liquidation of a pension fund is met if a minimum of 5% of active insured persons and pensioners leave the pension fund and the pension capital of the active insured persons and pensioners decreases by a minimum of 5% as a result.

2.8 Employer's reporting obligation

The employer is obliged to inform the Foundation immediately of any reduction in the workforce or restructuring of its company that could lead to a partial liquidation of the pension fund. The context of the downsizing, the employees affected and the end of their employment relationships must be reported in particular. The employer must also disclose whether the departures are voluntary or involuntary within the meaning of para. 3.

2.9 Employer's responsibility and cooperation

The answer to the question of whether the conditions for partial liquidation of a pension fund have been met, and the application of the procedure itself, are within the remit of the Board of Trustees. The employer is obliged to provide the Board of Trustees with all the information required to proceed with the partial liquidation.

Art. 3 Conditions for the full liquidation of a pension fund

3.1 Conditions for the full liquidation of a pension fund

In the event of the termination of an affiliation contract, the condition for the full liquidation of a pension fund has been met. In this case, Art. 4 to 8 apply by analogy.

3.2 Waiving the implementation of the full liquidation of a pension fund

The implementation of full liquidation is waived when:

- a. all pension liabilities and assets, including all rights and obligations, are transferred to another pension scheme and the pension fund has no shortfall at time of transfer, or
- b. neither active insured persons nor pensioners are insured with the pension fund at the time of dissolution of the affiliation contract and there are neither free funds or a shortfall.

Art. 4 Cut-off date

4.1 Cut-off date for partial liquidation and applicable balance sheet date

The partial liquidation cut-off date is determined by the end of the staff down-sizing or restructuring or the date of the partial dissolution of the affiliation agreement. The calculation of the funding ratio and financial situation is based on the annual financial statements of the financial year preceding this cut-off date. If there is a period of 9 or more months between the last balance sheet date and the partial liquidation cut-off date, the subsequent regular balance sheet date applies.

4.2 Change in assets and liabilities

If there are changes of at least 5% in assets or liabilities between the applicable balance sheet date and the transfer of funds, the non-actuarial reserves and free funds or shortfall due for transfer will be amended accordingly.

Art. 5 Collective departures and transfer type

5.1 Collective departure

If all the departing persons or a majority thereof, i.e. a minimum of 10 active insured persons, transfer to a new pension fund with the same employer, this constitutes a collective departure. In the majority scenario, there is a distinction between collective and individual departures.

5.2 Sum of funds for transfer

As the foundation is a pension solution within the meaning of Art. 1e OPO 2, neither reserves for fluctuations in asset value nor actuarial reserves are accumulated. Correspondingly, in the event of a collective departure, only the pension capital of the active insured persons and pensioners and the share of free funds are collectively transferred.

5.3 Decision on transfer type

The decision as to whether the total sum (termination benefits, pensioners' pension capital and free funds) allocated to the departing members following partial liquidation is transferred in cash or as an asset crosssection lies with the Board of Trustees.

5.4 Actuarial shortfall

With a collective departure too, any deductions for an actuarial shortfall are made on an individual basis from the pensioners' termination benefit or pension capital.

Art. 6 Determining free funds, actuarial reserves and reserves for fluctuations in asset value plus any pension fund shortfall

6.1 Basic principles

The following basic principles apply when determining free funds as well as any pension fund shortfall:

- a. the applicable annual financial statement under Swiss GAAP FER 26;
- b. the actuarial balance sheet with the funding ratio as per Art. 44 OPO 2.

6.2 Adjusting the applicable balance sheet

The commercial balance sheet as per Art. 4 is to be evaluated in light of the partial liquidation and adjusted if necessary. The free funds and/or shortfall of a pension fund resulting from these adjustments are key to the partial liquidation as per Art. 7.

6.3 Shortfall

A shortfall impacting a pension fund is broken down between the departing and remaining pension fund members so that the pension fund's funding ratio as determined under para. 2 remains unchanged before and after the departures. The portion of the shortfall attributed to the departing members is calculated as a proportion of their pension capital (termination benefits of active insured persons and/or pension capital of pensioners).

6.4 Employer contribution reserve with waiver of use

In the event of the partial liquidation of a pension fund with a shortfall, the employer contribution reserve with waiver of use must be dissolved in favour of the departing members, to the extent that it relates to the unsecured pension capital designated for transfer.

6.5 Provisional charging

The foundation can provisionally reduce pensioners' individual termination benefits and pension capital in the event of imminent partial liquidation when a pension fund shortfall is suspected. The provisional reduction is only for active insured persons and pensioners who are likely to be affected by the partial liquidation. It must expressly be designated as such. Following completion of the partial liquidation procedure, the foundation will issue a definitive statement of account and pay out any difference plus interest. Excessive termination benefit payments must be refunded by the active insured persons and/or pensioners, including the interest paid on such benefits.

6.6 Low level of free funds

If the free funds come to less than 5% of the pension capital of the remaining fund members, these funds will not be distributed.

Art. 7 Distribution key for free funds

7.1 Procedure

In the event of the partial liquidation of a pension fund, both collective and individual departures generate an entitlement to free funds. The members entitled to free funds are identified via the following steps:

- a. Both active members and pensioners are divided into remainers (those staying in the pension fund) and leavers (those leaving the pension fund).
- b. The free funds are divided between remainers and leavers, separately for active members and pensioners, proportionally to their pension capital eligible for distribution (see para. 2). The free funds are collectively transferred in the event of a collective departure.
- c. An individual distribution of free funds is made proportionally to the pension capital eligible for distribution.

7.2 Interest

Following conclusion of the procedure, default interest must be paid following a period of 30 days in accordance with the OPA.

Art. 8 Information and procedure

8.1 Board of Trustees

The Board of Trustees must decide whether the conditions for a partial liquidation are fulfilled and on whether to implement a pension fund's partial liquidation. In so doing it must in particular determine the event that led to the pension fund's partial liquidation, the exact time of occurrence of said event and the relevant period within the meaning of Art. 2 and Art 4.

8.2 Information and settlement procedure

The information and settlement procedure is as follows:

- a. The Board of Trustees discloses the decision to partially liquidate the pension fund including the distribution plan and the reasons for its decision in writing to the persons affected by the partial liquidation (remaining and departed active insured persons and pensioners). At the same time, the Board of Trustees gives notice that the relevant commercial balance sheet, actuarial report and distribution plan are available for consultation at the headquarters of the pension scheme for 30 days from notification. The persons affected, however, have no right to consult any individual data that does not pertain to them.
- b. Every person affected has the right to appeal the decision, distribution plan and procedure within 30 days of disclosure by the Board of Trustees. This appeal must be in writing and must include supporting reasons.
- c. The Board of Trustees will deliver a decision on the appeal within an appropriate timeframe. This decision on the appeal is disclosed to the appellant, together with a written justification.
- d. The affected persons have the option of having the Board of Trustees' decision on the appeal reviewed by the cantonal supervisory authority within 30 days of disclosure.

- e. If an affected person requests a review within the relevant period by the cantonal supervisory authority of the Board of Trustees' decision on the appeal, the cantonal supervisory authority will issue a decree within an appropriate time.
- f. An objection against the cantonal supervisory authority's decision can be lodged with the Federal Administrative Court. An objection against the decision of the cantonal supervisory authority has a suspensory effect only if the President of the relevant division of the Federal Administrative Court or the judge in charge of conducting the proceedings issues a statement to that effect, whether ex officio or at the request of the appellant. If no suspensory effect is granted, the decision by the Federal Administrative Court is only in favour of or against the appellant. Otherwise, Art. 74 BVG applies.

8.3 Execution within the pension scheme

The partial liquidation of a pension fund can be completed if:

- a. no objection is made to the Foundation Board of Trustees within the 30-day period or any appeal is settled by mutual agreement;
- b. there is written confirmation by the supervisory authority confirming it was not requested within the allocated period to review the procedure and distribution plan.

8.4 Completion with the supervisory authority

If the supervisory authority is requested by one or more than one persons affected by the partial liquidation of a pension fund to review the procedure and distribution plan, the partial liquidation cannot be completed until:

- a. there is a decision with legal force (decree) from the cantonal supervisory authority;
- b. an objection against the decree is not granted suspensory effect.

8.5 Transfer contract

In the event of a collective asset transfer to one or more pension schemes, the pension scheme from which the funds are being transferred will draw up a transfer contract.

8.6 Transfer type

In the event of an individualisation of entitlements (individual departure), the regulatory provisions on the application of the termination benefit shall apply by analogy to the application of the additional entitlement to free funds.

8.7 Statutory auditors

The statutory auditors confirm the proper completion of the pension fund's partial liquidation as part of the ordinary annual reporting. This confirmation must be included in the notes to the annual financial statements.

8.8 Legal entitlement

Legal entitlement to the collective and/or individually allocated free funds only applies following the expiry of the appeal period without use or, in the event of an appeal, once the legal avenues for appeals and objections have been exhausted.

C Full and partial liquidation of the Foundation

Art. 9 Basic principles and conditions for the partial liquidation of the Foundation

9.1 Basic principle as per Art. 18a and 19 FZG and Art. 53d BVG

In the event of a partial liquidation of the Foundation, there is an individual or collective entitlement to a portion of the Foundation's free funds in addition to the entitlement to regulatory termination benefit. If there is a shortfall, the missing amount is deducted proportionally from the termination benefit of the active insured persons and/or pension capital of the pensioners.

9.2 Conditions for a partial liquidation of the Foundation

The conditions for a partial liquidation are met when the free funds at Foundation level exceed 5% of the pension capital of the active insured persons and pensioners and the Foundation's entire pension capital (active insured persons and pensioners) is reduced by at least 5% within a year due to the dissolution of one or more than one affiliation agreements.

9.3 Foundation shortfall

If the Foundation incurs a shortfall as per Art. 44 OPO 2, there will be a partial liquidation at Foundation level if the outgoing pension funds are underfunded on the partial liquidation cut-off date and the conditions under para. 2 have been met. If the funding ratio of the outgoing pension funds on the partial liquidation cut-off date is at least 100%, there will be no partial liquidation at Foundation level, even if the Foundation is underfunded as per Art. 44 OPO 2.

9.4 Implementation of a partial liquidation of the Foundation

Art. 4 to 8 apply by analogy to the implementation of a partial liquidation of the Foundation.

Art. 10 Conditions for the full liquidation of the Foundation

10.1 Conditions for a full liquidation of the Foundation

The supervisory authority decides whether the conditions for the full liquidation of the Foundation have been met.

D Entry into force

Art. 11 Approval and entry into force

11.1 Entry into force

These regulations – subject to approval by the responsible supervisory authority as per Art. 53b para. 2 OPA – enter into force with retroactive effect to 31 December 2019. The active insured persons and pensioners will be in-formed about the relevant decree and legal appeal of the supervisory authority in a suitable format. The decree comes into legal force following expiry of the appeal period.

11.2 Changes

The regulations are subject to change or cancellation at any time subject to a decision by the Board of Trustees, for example when the result of a distribution following partial liquidation leads to obviously unreasonable results or the ex-cessive consideration of an insured group. The Board of Trustees will present these regulations and any changes to the relevant supervisory authority for acknowledgement and approval.

11.3 Edition

If these regulations are translated into other languages, only the German text remains binding for interpretation purposes.

The Board of Trustees
Zurich, August 2020