

# **Pension Fund and Organisational Regulations**

## **Appendix 3**

**Partial liquidation of the Foundation**

**Partial and total liquidation of a pension fund  
valid from 1 January 2024**

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## 1. General provisions

- 1.1. These Regulations govern partial or total liquidation in accordance with Art. 18a and Art. 19 para. 2 FZG, Art. 53b to Art. 53d BVG and Art. 27g and Art. 27h BVV2
  - At the level of an affiliated pension scheme with an individual coverage ratio, or
  - At the level of a joint pool of multiple pension schemes with the same coverage ratio (in accordance with a separate agreement on the maintenance of a collective coverage ratio), or
  - At the level of the Foundation
- 1.2. Irrespective of the level, if the conditions for both partial and total liquidation are met, the two events are combined and only the total liquidation is carried out.
- 1.3. The annual financial statements audited by the auditors in accordance with Swiss GAAP FER 26 and the individual annual financial statements of the pension schemes derived from these form the basis for determining the assets of the Foundation or pension schemes as at the balance sheet date. The structure and components of the assets of an individual pension scheme are defined in the Affiliation Contract Conditions (ACC). Pension capital refers to the total pension capital of active insured persons and pension recipients as well as the underwriting provisions, unless expressly stated otherwise.
- 1.4. If the partial or total liquidation at all levels results in a significant structural change in the portfolio remaining with the pension scheme or Foundation which, according to the occupational pensions expert, necessitates increased or additional underwriting provisions, corresponding interests in the continuation of the portfolio may be asserted in the partial or total liquidation. The new provisions that are to be recognised are generally financed from the pension assets of the individual pension scheme or pool in which the structural changes are triggered, or which contribute to the structural changes of the Foundation. In some cases, they can also be financed in whole or in part from general foundation funds by resolution of the Foundation.
- 1.5. In the event of significant changes in assets and liabilities between the reporting date and the transfer of funds, any funds to be transferred (value fluctuation reserve, underwriting provisions and non-committed funds or deficits) are adjusted accordingly. This is the case if the coverage ratio of the pension scheme determined by means of an extrapolation to the date of the transfer deviates by more than five percentage points from the coverage ratio on the reference date of the partial or total liquidation.
- 1.6. The costs for carrying out the partial or total liquidation that are incurred on the basis of the cost regulations shall be deducted from the fluctuation reserve or non-committed funds of the pension scheme concerned or invoiced to the employer at the employer's request. In the event of a shortfall, the costs will be invoiced to the employer.
- 1.7. In the event of the total liquidation of the Foundation, the provisions for the pension schemes will apply as a guideline.

## 2. Partial liquidation of a pension scheme

### Conditions

- 2.1. The provisions for the partial liquidation of a single pension scheme are met:
- In the event of a significant reduction in a pension scheme's workforce. This is always the case if the conditions for collective redundancy pursuant to Art. 335d CO are met
  - In the event of a personnel-related restructuring of a pension scheme. This occurs when activities or business areas are merged, discontinued, sold, outsourced or changed in any other way
- 2.2. A reduction in the workforce is also deemed to be significant and a restructuring is deemed to have an effect on personnel if the number of active insured persons and the pension capital in the pension scheme are reduced to the following extent within the relevant period:
- |  |   |
|--|---|
| • Up to 10 actively insured persons          | By at least 3 involuntary redundancies <u>or</u> 20% of the pension capital |
| • Between 11 and 25 actively insured persons | By at least 4 involuntary redundancies and 15% of the pension capital       |
| • Between 26 and 50 actively insured persons | By at least 5 involuntary redundancies and 10% of the pension capital       |
| • Over 50 actively insured persons           | By at least 10% for both involuntary redundancies and the pension capital   |
- 2.3. A redundancy is considered to be involuntary if, as part of an economically justified workforce downsizing or a restructuring programme with an impact on personnel
- The employment of an actively insured person is terminated by the employer and he or she is not offered an equivalent position, or
  - An actively insured person terminates his/her employment him/herself after the company has announced the workforce downsizing or restructuring in order to avoid imminent termination by the employer. These will be taken into account no longer than 6 months after the date of the internal company announcement. The date of departure from the employer is decisive in this regard.
- Retirements, departures due to death or disability, terminations for disciplinary reasons and the expiry of fixed-term employment contracts are not considered involuntary redundancies.
- 2.4. If a pension scheme contractually belongs to a joint pool of multiple pension schemes with the same coverage ratio, the above requirements for partial liquidation must be met by all of the pension schemes participating in the pool.

### Reference date and relevant period

- 2.5. The relevant reference date for the partial liquidation is the balance sheet date closest to the end of the relevant period.
- 2.6. The calendar year is the relevant period for the reduction of the number of insured persons and the pension capital. If there is a partial liquidation as a result of a reduction due to a personnel-related restructuring or an economically justified reduction of the workforce by the employer, and if earlier exits of actively insured members are closely related to this situation in terms of substance and time, meaning that they must be considered as a single event, the relevant period shall be adjusted accordingly.

### Stakeholder groups

- 2.7. The insured persons are divided into the following groups for the distribution of claims:
- The **"continuity"** group consists of the actively insured persons and pension recipients who remain in the pension scheme. The existing underwriting provisions at the pension scheme level and the new provisions to be recognised as at the reporting date due to a structural change (see Section 1.4) are allocated to the pension capital of this group of persons.
  - The **"collective exits"** group consists of the actively insured persons and pension recipients who are collectively leaving the pension scheme. A collective exit is when more than 50% of a pension scheme's insured persons transfer to another pension scheme or at least 5 insured persons enter into an employment relationship with the same new employer, and therefore transfer en bloc to the pension scheme of the new employer.
  - The **"individual exits"** group consists of the actively insured persons who are leaving the pension scheme individually. This applies to all insured persons who leave the pension scheme in the relevant period and do not fall under the collective exits.

## Claims

- 2.8. In the event of the partial liquidation of a pension scheme, the following assets are distributed in accordance with the distribution key:
- Value fluctuation reserve
  - Non-committed funds or deficits
- 2.9. If underwriting provisions exist at the pension scheme level as at the reporting date, these are only transferred on a pro rata basis in the event of a **collective exit** if the corresponding actuarial risks are also transferred. The corresponding share is calculated in proportion to the pension capital. However, the share is reduced in full or in part, in accordance with professionally recognised principles, if the **collective exits** have made no or only a small contribution to the formation of the provisions. In any case, there is no entitlement if the insured persons leaving the pension scheme collectively have not belonged to the pension scheme for at least two full insurance years on average.
- 2.10. Collective exits are not entitled to the fluctuation reserve or underwriting provisions if the partial liquidation was caused by the group that is collectively exiting.

## Distribution of the value fluctuation reserve

- 2.11. The value fluctuation reserve (distribution amount) is distributed between the groups in proportion to the pension capital.
- 2.12. The **collective exits** have a collective claim to their share of the fluctuation reserve. This entitlement is transferred collectively and without interest to the acquiring employee benefit scheme.
- 2.13. The shares of the **continuity** and **individual exits** groups remain with the pension scheme, without individual allocation.

## Distribution of non-committed funds

- 2.14. The distribution of non-committed funds (distribution amount) between the groups is based on the sum of the shares determined individually per insured person. The individual share is determined as follows:

*Personal score = pension capital as at the reference date × number of insurance years in the pension scheme (max. 10)*

*Individual share = distribution amount ÷ sum of all scores × personal score*

For persons who left the scheme before the reference date, the pension capital is deemed to be their termination benefit under the Regulations. In the case of re-entries, the insurance years completed since the date of the last entry are calculated.

- 2.15. The share of the **continuity** group remains in the pension scheme without individual allocation.
- 2.16. The **collective exits** have a collective claim to the sum of their individual shares of the non-committed funds. This entitlement is transferred collectively and without interest to the acquiring employee benefit scheme.
- 2.17. Persons in the **individual exits** group have an individual claim to their individual share of the non-committed funds. This non-mandatory entitlement is transferred without interest, separately or together with the termination benefit, to their new employee or vested benefits schemes. Shares of less than CHF 300 are considered petty amounts and are not paid out. They remain in the pension scheme for the benefit of those who remain in the scheme.

### Distribution of the deficit (shortfall)

- 2.18. The distribution of the deficit (distribution amount) between the groups is based on the sum of the shares determined individually per insured person. The individual share is determined as follows:

*Personal score = pension capital as at the reference date + early withdrawals in the last 12 months - contributions in the last 12 months*

*Individual share = distribution amount ÷ sum of all scores × personal score*

Advance withdrawals for home ownership and divorces are deemed to be early withdrawals. Pension payments to pension recipients do not count as early withdrawals. Contributions include vested benefits, voluntary purchases, repayments for home ownership, incoming funds from divorce and non-committed funds from other employee benefit schemes.

- 2.19. The share of the **continuity** group remains in the pension scheme without individual allocation.
- 2.20. The shares of the deficit attributable to the persons in the **collective exits** group are collectively deducted when their termination benefits are transferred to the acquiring pension scheme.
- 2.21. The shares of the shortfall attributable to persons in the **individual exits** group are deducted from their termination benefits. The retirement assets pursuant to Art. 15 BVG are preserved in any case. If the unreduced or insufficiently reduced termination benefit was transferred, the excess amount transferred must be refunded by the relevant employee or vested benefits scheme or, in the absence thereof, by the insured person. Shares of less than CHF 300 are considered petty amounts and are not deducted. They remain in the pension scheme, to the detriment of those who remain in the scheme.

### Procedures and information

- 2.22. The Pension Fund Commission and the employer are obliged to inform the Foundation of the possible partial liquidation of their pension scheme. The employer and the Pension Fund Commission are obliged to provide the Foundation with all the information required to fulfil its task.
- 2.23. The Foundation shall establish the facts of the partial liquidation and notify the pension scheme thereof in writing.
- 2.24. The Pension Fund Commission shall inform the insured persons concerned of the partial liquidation within 30 days of notification by the Foundation. These have the right to have the conditions, the procedure and the distribution plan reviewed and decided upon by the competent supervisory authority within 30 days of receipt of the information, provided that a prior settlement with the Foundation has been unsuccessful.
- 2.25. If the partial liquidation of the pension scheme indisputably does not lead to any material claims by insured persons of the exiting stakeholder groups because there are no funds to be distributed, said insured persons need not be informed individually.
- 2.26. If no objections are raised with the supervisory authority, the distribution plan shall be executed. The auditors shall confirm in their report that the partial liquidation has been carried out properly. If complaints are submitted to the supervisory authority, the latter shall review and decide on the conditions, the procedure, the distribution plan and the objection. An appeal against the decision of the supervisory authority may be lodged with the Federal Administrative Court within a period of 30 days pursuant to Art. 74 BVG. The appeal shall only have suspensive effect if the president of the competent division of the Federal Administrative Court or the judge instructing the appeal issues a corresponding order.

### 3. Total liquidation of a pension scheme

#### Conditions

- 3.1. The conditions for the total liquidation of the pension scheme are fulfilled if the affiliation contract is terminated in accordance with Art. 7 of the general Affiliation Contract Conditions (ACC).

#### Effective date

- 3.2. The relevant effective date of the total liquidation corresponds to the effective date of the cancellation of the affiliation contract.
- 3.3. In the case of terminations of affiliation contracts during the year, the coverage ratio relevant for determining the assets of the pension scheme shall be approximated on the basis of the investment performance of the current year calculated by the portfolio manager, the interest on the retirement assets and any employer contribution reserves as well as other relevant data.

#### Stakeholder groups

- 3.4. The insured persons are divided into the following groups for the distribution of claims:
- The “**continuity**” group consists of the pension recipients who remain in the pension scheme. The existing underwriting provisions at the pension scheme level and the new provisions to be recognised as at the reporting date due to a structural deterioration (see Section 1.4) are allocated to the pension capital of this group of persons.
  - The “**collective exits**” group consists of the actively insured persons and pension recipients who are collectively transferring to an employee benefit scheme.
- 3.5. If the affiliated company no longer employs any employees on the effective date because it has been liquidated due to cessation of business, bankruptcy or similar reasons, or is expected to be liquidated in the foreseeable future, the following group is also taken into account for the distribution of claims:
- The “**individual exits**” group consists of the actively insured persons who leave the pension scheme individually in the same calendar year as the effective date. This applies to all insured persons who leave the pension scheme in the relevant period and do not fall under the collective exits. If the pension scheme has non-committed funds on the effective date, insured persons who exited in the three preceding calendar years are also taken into account.

#### Claims

- 3.6. In the event of the total liquidation of a pension scheme, the following assets are distributed in accordance with the distribution key:
- The value fluctuation reserve. If the affiliated company is liquidated on the effective date or will be in the foreseeable future, the value fluctuation reserve becomes non-committed funds
  - Non-committed funds or deficits
- 3.7. If there is an employer contribution reserve involved in the total liquidation of a pension scheme and this can no longer be used for its intended purpose because the affiliated company has been liquidated due to cessation of business, bankruptcy or similar reasons, or is expected to be liquidated in the foreseeable future, the employer contribution reserve will be dissolved and allocated to the pension scheme’s non-committed funds.
- 3.8. If underwriting provisions exist at the pension scheme level as at the reporting date, these are only transferred on a pro rata basis in the event of a **collective exit** if the corresponding actuarial risks are also transferred. The corresponding share is calculated in proportion to the pension capital. However, the share is reduced in full or in part, in accordance with professionally recognised principles, if the **collective exits** have made no or only a small contribution to the formation of the provisions. In any case, there is no entitlement if the insured persons leaving the pension scheme collectively have not belonged to the pension scheme for at least two full insurance years on average.

- 3.9. If the employer has not paid all contributions owed by the time of the total liquidation of its pension scheme and bankruptcy or similar proceedings have been opened against it, the outstanding amount receivable shall be offset against the fluctuation reserve or non-committed funds of the pension scheme concerned. As soon as it is determined whether the outstanding contributions will still be recovered in full or in part by a payment from the bankruptcy office or the Guarantee Fund, this netting can be reversed to the corresponding extent. After that, the termination of the contract can be processed. Individual termination benefits are not reduced by outstanding contributions, subject to Art. 39 BVG.

#### Distribution following termination of the affiliation contract by the Company in the event of **excess cover**

- 3.10. If pension recipients remain with the Foundation (**continuity**), the pension capital, including the additionally required underwriting provisions financed using the pension scheme's pension assets (please also refer to the ACC), is allocated to the pension scheme for employerless pension recipients at the level of the Foundation, with a coverage ratio of 100%.
- 3.11. The **collective exits** have a collective claim to the remaining amount from the fluctuation reserve and non-committed funds after deduction of the funds required for the pension recipients remaining in the Foundation (continuity). This entitlement is transferred collectively and without interest to the acquiring employee benefit scheme.

#### Distribution following termination of the affiliation contract by the Company in the event of **a shortfall**

- 3.12. If pension recipients remain with the Foundation (**continuity**), the pension capital, including the additionally required underwriting provisions financed using the pension scheme's pension assets (please also refer to the ACC), is allocated to the pension scheme for employerless pension recipients at the level of the Foundation, with a coverage ratio of 100%.
- 3.13. The entire shortfall after adding the funds required for the pension recipients in the pension scheme who are remaining in the Foundation (continuity) is allocated to the **collective exits**. It is collectively deducted when their termination benefits are transferred to the acquiring pension scheme.

#### Distribution following liquidation of the affiliated company in the event of **excess cover**

- 3.14. If pension recipients remain with the Foundation (**continuity**), the pension capital, including the additionally required underwriting provisions financed using the pension scheme's pension assets (please also refer to the ACC), is allocated to the pension scheme for employerless pension recipients at the level of the Foundation, with a coverage ratio of 100%.
- 3.15. The distribution of the non-committed funds (distribution amount) after deduction of the funds required for the pension recipients remaining in the Foundation (continuity) among the groups of persons is based on the sum of the shares determined individually per insured person. The individual share is determined as follows:

*Personal score = pension capital as at the reference date × number of insurance years in the pension scheme (max. 10)*  
*Individual share = distribution amount ÷ sum of all scores × personal score*

For persons who left the scheme before the reference date, the pension capital is deemed to be their termination benefit under the Regulations. In the case of re-entries, the insurance years completed since the date of the last entry are calculated.

- 3.16. The **collective exits** have a collective claim to the sum of their individual shares of the distribution amount. This entitlement is transferred collectively and without interest to the acquiring employee benefit scheme.
- 3.17. Persons in the **individual exits** group have an individual claim to their individual share of the distribution amount. This non-mandatory entitlement is transferred without interest, separately or together with the termination benefit, to their new employee or vested benefits schemes. Shares of less than CHF 100 are considered petty amounts and are not paid out. They are distributed between the other beneficiaries.

#### Distribution following liquidation of the affiliated company in the event of **a shortfall**

- 3.18. If pension recipients remain with the Foundation (**continuity**), the pension capital, including the additionally required underwriting provisions financed using the pension scheme's pension assets (please also refer to the ACC), is allocated to the pension scheme for employerless pension recipients at the level of the Foundation, with a coverage ratio of 100%.

- 3.19. The distribution of the deficit (distribution amount) between the groups is based on the sum of the shares determined individually per insured person. The individual share is determined as follows:

*Personal score = pension capital as at the reference date + early withdrawals in the last 12 months - contributions in the last 12 months*

*Individual share = distribution amount ÷ sum of all scores × personal score*

Advance withdrawals for home ownership and divorces are deemed to be early withdrawals. Pension payments to pension recipients do not count as early withdrawals. Contributions include vested benefits, voluntary purchases, repayments for home ownership, incoming funds from divorce and non-committed funds from other employee benefit schemes.

- 3.20. The shares of the deficit attributable to the persons in the **collective exits** group are collectively deducted when their termination benefits are transferred to the acquiring pension scheme.
- 3.21. The shares of the deficit attributable to persons in the **individual exits** group are deducted from their termination benefits. The retirement assets pursuant to Art. 15 BVG are preserved in any case. If the unreduced or insufficiently reduced termination benefit was transferred, the excess amount transferred must be refunded by the relevant employee or vested benefits scheme or, in the absence thereof, by the insured person. Shares of less than CHF 100 are considered petty amounts and are not deducted. They are distributed between the other beneficiaries.

### Procedures and information

- 3.22. The Pension Fund Commission and the employer are obliged to inform the Foundation of the existence of a total liquidation. The employer and the Pension Fund Commission are obliged to provide the Foundation with all the information required to fulfil its task.

#### **In the event that the affiliation contract is cancelled due to termination by the affiliated company:**

- 3.23. As part of the process of evaluating the new employee benefit scheme, the Pension Fund Commission informs the insured persons concerned about the impending total liquidation of the pension scheme and its consequences.

#### **In the event that the affiliation contract is terminated for any other reason:**

- 3.24. The Foundation establishes the facts of the total liquidation of the pension scheme and informs the insured persons concerned of the total liquidation. These have the right to have the conditions, the procedure and the distribution plan reviewed and decided upon by the competent supervisory authority within 30 days of receipt of the information, provided that a prior settlement with the Foundation has been unsuccessful.
- 3.25. If the total liquidation of the pension scheme indisputably does not lead to any material claims by insured persons of the exiting stakeholder groups because there are no funds to be distributed, said insured persons need not be informed individually.
- 3.26. If no objections are raised with the supervisory authority, the distribution plan shall be executed. The auditors shall confirm in their report that the total liquidation has been carried out properly. If complaints are submitted to the supervisory authority, the latter shall review and decide on the conditions, the procedure, the distribution plan and the objection. An appeal against the decision of the supervisory authority may be lodged with the Federal Administrative Court within a period of 30 days pursuant to Art. 74 BVG. The appeal shall only have suspensive effect if the president of the competent division of the Federal Administrative Court or the judge instructing the appeal issues a corresponding order.



## 4. Partial liquidation of the Foundation

### Principles

- 4.1. In the event that the affiliation contract is revoked, the following assets shall be transferred to the exiting pension schemes:
- Retirement assets
  - Pension recipients' pension capital for ongoing and pending benefits
  - All employer contribution reserves
  - Value fluctuation reserve
  - Non-committed funds or deficits (shortfalls)
  - Contribution account
  - Underwriting provisions managed at pension scheme level
  - Any collective share of underwriting provisions at the level of the Foundation in accordance with the following provisions

### Conditions, reference date and relevant period

- 4.2. The conditions for the partial liquidation of the Foundation are met if the number of actively insured persons and the total pension capital of the Foundation fall simultaneously by at least 5% as a result of the termination of an individual affiliation contract. The reference date, including for the calculation of the reductions, is 31 December of the calendar year in which the effective date of the termination of the affiliation contract falls.
- 4.3. If the number of actively insured persons and the total pension capital of the Foundation are simultaneously reduced by at least 10% as a result of the sum of individual terminations of affiliation contracts on the same effective date, a partial liquidation of the Foundation will also be carried out as of 31 December of the same calendar year.

### Stakeholder groups

- 4.4. The pension schemes are divided into the following groups for the distribution of claims:
- The “**continuity**” group is made up of those pension schemes that were part of the Foundation's portfolio on 31 December of the calendar year in which the conditions for the partial liquidation were met.
  - The “**exits**” group consists of the departing pension schemes that triggered the partial liquidation of the Foundation, in accordance with the provisions of either Section 4.2 or Section 4.3 of these Regulations.

### Entitlements and distribution

- 4.5. The departing pension schemes that triggered the partial liquidation of the Foundation receive a collective, prorated entitlement to the underwriting provisions held at the level of the Foundation as at the reference date, provided that the corresponding actuarial risks are also transferred. The possible provisions, together with the mode of distribution, are as follows:

Individual distribution	Collective distribution
Provision for pending insured events	Provision for insurance risks
Provision for retirement losses	Provision for the reduction of the technical interest rate
Provision for portfolio schemes	

- 4.6. In the case of provisions with **individual distribution**, an exiting pension scheme in the **exits** group is given a share of what is provided for in total for the corresponding insured persons of the pension scheme. This share is reduced by 15% for each full and partial year by which the exiting pension scheme was affiliated to the Foundation for less than 7 years. The entitlement is transferred collectively to the acquiring employee benefit scheme.

- 4.7. The distribution of provisions with **collective distribution** to the stakeholder groups is proportional to the retirement assets (provision for insurance risks) or pension capital of pension recipients (provision for the reduction of the technical interest rate). The proportional share to which an individual pension scheme in the **exits** group is entitled is reduced by 15% for each full and partial year by which the exiting pension scheme was affiliated to the Foundation for less than 7 years. The entitlement is transferred collectively to the acquiring employee benefit scheme.

#### Procedures and information

- 4.8. The essential information, such as the issue of the partial liquidation of the Foundation, the amount of the underwriting provisions and the distribution plan, shall be recorded in writing in the form of a declaratory resolution of the Board of Trustees on the partial liquidation.
- 4.9. If the examination has shown that the conditions for a partial liquidation of the Foundation are fulfilled and a corresponding procedure is carried out, the Foundation shall inform the pension schemes of the decision on the partial liquidation, the amount of the underwriting provisions, the distribution plan and the further procedures. The pension schemes have the right to inspect the files at the Foundation within 30 days of delivery of the information and, if necessary, to lodge an objection against the decision of the Board of Trustees. If the existing differences cannot be resolved amicably, the Foundation shall set a deadline of 30 days for the pension schemes to have the conditions, the procedure and the distribution plan reviewed and decided by the supervisory authority.

### 5. Entry into force

- 5.1. This Appendix 3 shall enter into force on 1 January 2024, subject to the approval of the BVG and Foundation Supervisory Authority for the two Basel Cantons (BSABB).

**Adopted by the Board of Trustees on 21 November 2023.**

**In the event of any ambiguities or contradictions between the German and English versions of this regulation, the German version shall always prevail and be legally binding.**