

Regulations on partial liquidation

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Purpose and general principles

Art. 1 But et principes généraux

- Based on Articles 53b and 53d LPP/BVG, Articles 27g and 27h OPP2/BV2 and on the pension fund regulations of Groupe Mutuel Prévoyance–GMP (hereafter referred to as the “pension fund”), the Pension Board has issued these Regulations.
- The Regulations set out the conditions and principles applicable to a partial liquidation of the pension fund (Part A) and to a partial liquidation of the pension provision of the affiliates to the pension fund (Part B), and sets out the procedure (Part C).
- Affiliates are companies and self-employed individuals affiliated to the pension fund with their employees.
- In the event of a partial liquidation of the pension fund, there is a collective entitlement to a share of the uncommitted funds of the pension fund, in addition to the entitlement to regulatory termination benefits. If the coverage ratio is less than 100%, the shortfall may be deducted proportionally from the termination benefits, provided that this does not reduce the LPP/BVG retirement assets.
- In the event of a partial liquidation of an affiliate's pension provision, there is an individual or collective right to a share of the uncommitted funds of this pension provision, in addition to the entitlement to regulatory termination benefits.

- If the conditions for a partial liquidation of the pension fund are met because one or more affiliates meet the conditions for a partial liquidation and the relevant thresholds are reached, the procedure is carried out first at the level of the pension fund and then at the level of the affiliates.

A. Partial liquidation of the pension fund

Art. 2 Terms and conditions

- The terms and conditions for partial liquidation are fulfilled in the following cases:
 - the number of employees of one or more affiliated employers is significantly reduced within the meaning of Art. 4.2 of these Regulations resulting in the number of active insured persons decreasing by at least 10% and the pension capital of the pension fund decreasing by at least 10% in the course of a calendar year, or
 - one or several employers terminate the affiliation contract after a period of five years, provided that such termination results in a withdrawal of at least 10% of the pension fund's pension capital.
- In the event of Art. 2.1a of these Regulations, the decrease in the number of employees is calculated by comparing the number of employees at the beginning of the relevant accounting period with the number of employees at the end of the period (net variation).

3. Departures due to voluntary resignations, termination of fixed-term employment contracts of less than two years, retirement, disability and death are not taken into account in the calculation of departures within the meaning of Art. 2.1 of these Regulations.

Art. 3 Principles applicable to the partial liquidation of the pension fund

3.1 Reference date and changes in assets and liabilities

1. The reference date of the partial liquidation is 31 December of the calendar year in which the conditions for a partial liquidation are fulfilled in accordance with Art. 2. This reference date is decisive for calculating the uncommitted funds or the shortfall as well as for determining the affiliates to be considered in the distribution plan.
2. In the event of a change of at least 5% in assets or liabilities between the reference date for drawing up the partial liquidation balance sheet and the date of transfer of the funds, the uncommitted funds, technical provisions and value fluctuation reserve to be transferred shall be adjusted accordingly by the Pension Board.

3.2 Principles

1. The uncommitted funds and the shortfall are calculated based on:
 - a. the annual accounts drawn up in accordance with the Swiss GAAP ARR 26,
 - b. the technical balance sheet indicating the coverage ratio calculated in accordance with Art. 44 OPP2/BVV2.

3.3 Calculation of the uncommitted funds and distribution

1. The pension fund differentiates between:
 - a. the remaining group made up of active insured persons and pensioners who still belong to the group of persons insured with the pension fund after the partial liquidation has been completed;
 - b. the departing group made up of insured persons and pensioners who, at the time of the partial liquidation, depart from the pension fund in accordance with Article 2 of these Regulations.
2. To calculate the amount of uncommitted funds to be distributed per group, the pension capital and extent to which the departing employees have contributed to the uncommitted funds are taken into account.
3. The uncommitted funds are distributed among the departing group in proportion to the pension capital of the insured persons and pensioners on the reference date of the partial liquidation and the insured person's period of affiliation, up to a maximum of five years.
4. The pension capital is defined as the retirement assets of active and disabled insured persons and the actuarial reserves of the pensioners. The period of affiliation is determined by the number of years between the date the insured person joined the pension fund and the reference date of the partial liquidation.

3.4 Distribution of the technical provisions and value fluctuation reserve

1. An entitlement to a share of the technical provisions and

the value fluctuation reserve exists only in the event of a collective departure within the meaning of Art. 3.5 of these Regulations.

2. The distribution of technical provisions is carried out in accordance with the provisioning method described in the regulations on technical provisions, taking into account the extent to which the departing group contributed to its value. An entitlement to technical provisions exists only to the extent that actuarial risks are also transferred.
3. The distribution of the value fluctuation reserve is carried out in proportion to the pension obligations and taking into account the extent to which the departing group contributed to its constitution.

3.5 Collective and individual departure

1. A collective departure means when several active insured persons, but at least 20 insured persons affected by the partial liquidation, are transferred together to the same pension institution. Other departures are considered individual departures.
2. In the event of a collective departure, the uncommitted funds are paid out collectively together with the technical provisions and the value fluctuation reserve. In the event of an individual departure, there is an entitlement to the uncommitted funds calculated based on the same distribution principles as those set out in Art. 5.3 of these Regulations. The pension fund retains the uncommitted funds of the remaining group, without any allocation being made.

3.6 Shortfall

1. If the pension fund's annual accounts and technical balance sheet show that there is a shortfall, it is allocated to the affiliates of the departing groups in proportion to the retirement assets of the active insured persons on the reference date of the partial liquidation.
2. The portion of the shortfall allocated to the departing group is deducted from their pension capital, provided this does not reduce the LPP/BVG retirement assets. If the termination benefit was already transferred without being reduced, the insured person or beneficiary is required to return the surplus amount received.
3. The portion of the shortfall allocated to employees of the remaining group remains with the pension fund, without there being any individual allocation.
4. Based on the partial liquidation report of the pension fund's accredited expert, the pension fund may waive a reduction if it has a coverage ratio of at least 95% and if this ratio is not significantly reduced after payment of the unreduced vested termination benefits.

B. Partial liquidation of affiliates' pension provision

Art. 4 Terms and conditions

1. The terms and conditions for partial liquidation are presumed to be met in the following cases:
 - a. the number of staff is significantly reduced, or
 - b. the company undergoes a restructuring, or
 - c. the affiliation contract with the pension fund is partial-

- ly terminated, in the event that active insured persons leave the pension fund whereas pensioners remain.
2. Significant reduction in the sense of Art. 4.1a of these Regulations means a long-term reduction (for more than one year) in the number of active insured persons following departures, which may also extend over a period of one or two calendar years, in the following proportions depending on the number of persons insured by the employer's affiliation contract:
 - Up to 10 insured persons
At least three departures and withdrawal of at least 30% of the retirement assets
 - 11 to 25 persons insured persons
At least four departures and withdrawal of at least 20% of the retirement assets
 - 26 to 50 insured persons
At least five departures and withdrawal of at least 15% of the retirement assets
 - 51 and more insured persons
Departure of at least 10% of insured persons and withdrawal of at least 10% of the retirement assets.
 3. Restructuring of the company within the meaning of Art. 4.1b of these Regulations means any strategic reorganisation of the business, resulting in the departure of at least three insured persons (gross variation), involving either the setting up of new basic activities or by the discontinuation, sale or other modification of one or more areas of activity. Restructuring may also occur when the company discontinues some of its internal services and outsources them. On the other hand, rearranging management structures without reducing staff cannot be deemed as a company restructuring.
 4. The employer is required to inform the affiliate's Administrative Committee without delay if the workforce is reduced on a long-term basis or if the company is restructured. In particular, it must mention the context of the termination, the employees concerned, the end of the employment relationship and the reason for resignation or dismissal. The Administrative Committee then immediately informs the pension fund.
 5. Departures resulting from voluntary resignations, termination of fixed-term employment contracts of less than two years, retirement, disability and death are not taken into account in the calculation of departures.
 6. If the termination of an affiliation contract results in the departure from the pension fund of all the active insured persons and pensioners of the affiliation contract, this is a case of full liquidation of an affiliate's pension scheme, the applicable principles of which are defined in the pension fund regulations of Groupe Mutuel Prévoyance-GMP.
 7. The employer and the Administrative Committee undertake to provide the pension fund with all the information required to carry out the partial liquidation.

Art. 5 Principles applicable in the event of a reduction in the number of insured persons or company restructuring

5.1 Determining period

1. A verification of the significant reduction shall be carried out every calendar year. If the significant reduction is found to be in one calendar year, the relevant period is that calendar year. If the significant reduction is not found in one calendar year but in two, the relevant period is those two calendar years.
2. In the case of company restructuring, the relevant period is from the beginning to the end of the restructuring. This period is communicated by the employer to the pension fund and lasts a maximum of 24 months. If the qualifying period is longer than 24 months, the Pension Board may acknowledge several successive partial liquidations.

5.2 Reference date and changes in assets and liabilities

1. The reference date of the partial liquidation is 31 December of the financial year preceding the end of the reduction in the number of insured persons (Art. 4.2) or the company restructuring (Art. 4.3).
2. If a period of more than six months has elapsed between the pension fund's balance sheet date and the reference date of the partial liquidation, the pension fund may set a later due date for the balance sheet. This reference date is decisive for calculating the amounts of uncommitted funds.

5.3 Calculation of the uncommitted funds and distribution

1. The uncommitted funds of an affiliate's pension plan consist of:
 - the surplus account paid out by the pension fund (insofar as it was not directly distributed at the time of payment),
 - any assets from a previous affiliation to a pension fund that had not been distributed when the affiliation contract was terminated.
2. In the event of a significant change in the uncommitted funds between the reference date of the partial liquidation and the reference date of the transfer of funds, they shall be adjusted accordingly.
3. If, on the reference date, the uncommitted funds represent on average less than CHF 200 per active insured person, they will not be distributed.
4. The corresponding shares are determined according to the following steps:
 - a. The number of active employees and pensioners is broken down into a continuity staff (remaining insured persons) and departing staff (departing insured persons).
 - b. The uncommitted funds are divided between the active insured persons and the pensioners in proportion to the pension capital of the remaining insured persons and the departing insured persons.
 - c. The uncommitted funds are allocated individually to departing insured persons in proportion to their pension capital on the reference date multiplied by the

number of years and months of affiliation to the company's pension plan, up to a maximum of five years.

5. If it is not possible to determine precisely the duration of affiliation to the company's pension plan, the Administrative Committee may waive this requirement and apply a distribution that is simply proportional to the pension capital. If the company does not have an administrative committee, the pension fund may duly decide on the terms and conditions of individual cases.
6. If the number of active insured persons has changed by more than 10% between the time when the uncommitted funds were contributed to the pension fund and the partial liquidation, the pension fund may retroactively consider as beneficiaries of the liquidation those insured persons who have left the pension fund over a period of time up to the time when the uncommitted funds were contributed to the pension fund.
7. The uncommitted funds of the departing insured persons are paid out individually.
8. If a group of departing insured persons leaves the affiliate's pension plan for another pension institution (collective departure), their share of uncommitted funds is transferred to the new pension institution.
9. The uncommitted funds of the remaining insured persons shall remain in the affiliate's pension plan without any individual allocation.

Art. 6 Principles applicable in the event of partial termination of the affiliation contract

6.1 Reference date

1. The reference date of the partial liquidation that is decisive for calculating the uncommitted funds is the reference date of the partial termination of the affiliation contract.

6.2 Calculation of the uncommitted funds and distribution

1. The provisions of Art. 5.3.1 and Art. 5.3.2 apply.
2. The group of departing insured persons includes all persons, including any pensioners, who leave the company's pension plan in the event of partial termination of the affiliate's pension contract. The remaining insured persons are pensioners who remain with the pension fund in the event of partial termination of the affiliation contract.
3. The uncommitted funds are allocated in proportion to the pension capital on the reference date multiplied by the number of years and months of affiliation to the company's pension plan.
4. If departing insured persons, including any pensioners, leave the company's pension plan for the same new pension institution, their share of the uncommitted funds is transferred collectively. In other cases, the uncommitted funds are paid out individually.

C. Procedure

Art. 7 Authority

1. The Pension Board has the authority to determine whether the conditions for a partial liquidation of the pension fund or a partial liquidation of the pension plan of affiliates are met and to carry out the partial liquidation in accordance with the provisions of these Regulations. In particular, the Pension Board must determine the event that led to the partial liquidation, the amount of the uncommitted funds or the shortfall and the distribution plan.
2. In the event of a partial liquidation of the pension fund, the accredited expert shall draw up a report.

Art. 8 Information

1. The pension fund shall inform the concerned active insured persons and pensioners of the partial liquidation, in a timely and comprehensive manner, directly or through the administrative committees of the relevant employers, and shall draw their attention to the possibility of obtaining information at the headquarters of the pension fund for a period of 30 days from when the information was notified:
 - a. in the event of a partial liquidation of the pension fund, information on the relevant business balance sheet, the report of the accredited expert and the distribution plan;
 - b. in the event of a partial liquidation of an affiliate, information on the calculation of the uncommitted funds and distribution plan (individual calculation and distribution key); however, active insured persons and pensioners are not entitled to access the individual data of other insured persons.

Art. 9 Complaints and appeals

1. Any complaints against the provisions must be made in writing to the Pension Board within the 30-day period allowed for reviewing documents. If the complaints cannot be settled, they will automatically be submitted to the supervisory authority for decision.
2. An entitlement to uncommitted funds is only effective once the period for lodging complaints has elapsed without having been used or, in the event of an appeal, after the legal settlement of the appeals.
3. Active insured persons and pensioners have the right to have the terms and conditions, the procedure and the distribution plan verified by the competent supervisory authority and may apply directly to the supervisory authority for a decision.
4. The decision of the supervisory authority may be appealed to the Federal Administrative Court in accordance with Art. 53d, para. 6, respectively 74 of the LPP/BVG, within 30 days of its notification.

Art. 10 Implementation and information

1. Once the information has been provided and any claims are settled, the distribution plan shall be carried out.
2. Interest due on the amounts resulting from the distribution between the reference date and the date of actual payment corresponds to the interest rate for vested termination benefits in force on the reference date.
3. The individual payment of the uncommitted funds is implemented:
 - a. For active insured persons in addition to their vested termination benefits; the regulations on the use of vested termination benefits also apply, by analogy, to the use of the additional entitlement to uncommitted funds.
 - b. For pensioners, in the form of a cash payment.
4. In the case of a collective transfer of the shares of uncommitted funds to one or more other pension funds, and where technical provisions and value fluctuation reserves are involved, a transfer contract pursuant to Art. 98 LFus/FusG or, in the absence of surplus assets, a transfer contract pursuant to the Code of Obligations, must be concluded.
5. The auditors shall confirm the regulatory implementation of the partial liquidation in their standard annual report. This confirmation shall be attached to the annual financial statements.

Art. 11 Special provisions when implementing the partial liquidation of an affiliate

1. Where an employer has not paid all the contributions due or where bankruptcy or similar proceedings are initiated against the employer prior to the partial liquidation of the affiliate's pension plan, the contribution claim shall be offset against the available uncommitted funds, within the limits of the claim and within the limits permitted by Article 39 LPP/BVG. If the amortised amount can subsequently be settled in whole or in part by the employer or the Security Fund, the entitlements of the relevant insured persons shall be recalculated based on the increase in uncommitted funds and the amounts already paid out.
2. If uncommitted funds remain after the company has been liquidated for more than 10 years, the Pension Board shall allocate them to the uncommitted funds of the pension fund.
3. If an employer contribution reserve remains at the time of the partial liquidation and can no longer serve the purpose for which it was set up because the employer no longer employs staff who need to be insured, this reserve shall be dissolved and allocated to the uncommitted funds of the affiliate's pension plan.

4. In the event of extraordinary costs, such as those related to the expert opinions required in the event of an objection or claim in connection with the partial liquidation of the affiliate's pension plan, a contribution to the costs can be charged to the affiliate's uncommitted funds.

D. Effective date

Art. 12 Approval and effective date

1. These Regulations were approved by the Pension Board on 22 March 2021 and shall take effect upon approval of the competent supervisory authority in accordance with Article 53b LPP/BVG (28.06.2021). They replace the partial liquidation regulations of the pension fund and the partial liquidation regulations of the affiliate's pension plan of 11 December 2018.
2. The Regulations may be amended or repealed at any time by decision of the Pension Board. The Pension Board shall submit these Regulations and any amendments to the competent supervisory authority for review and approval.

Martigny, 22 March 2021

Groupe Mutuel Prévoyance–GMP

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