

Partial and Total Liquidation Regulations

Liberty BVG Collective Foundation

Contents

Art. 1 Purpose and scope of Regulations

General provisions

Art. 2 Departing headcount / members with incapacity for work

Art. 3 General principle

Art. 4 Reference date and basis / Calculation of non-committed assets or deficit (underfunding)

Partial or total liquidation of a pension fund

Art. 5 Conditions for a partial liquidation

Art. 6 Conditions for total liquidation

Art. 7 Employer's obligation to inform

Art. 8 Verifying and ascertaining the conditions

Art. 9 Waiving implementation of a liquidation procedure

Art. 10 Distribution plan and transfer of non-committed assets

Art. 11 Collective entitlement to actuarial provisions and investment fluctuation reserves

Art. 12 Compensating a deficit (underfunding)

Procedure and enforcement

Art. 13 Decision validating a partial or total liquidation

Art. 14 Implementation of a partial or total liquidation

Art. 15 Information for active members and pensioners

Art. 16 Enforcement

Art. 17 Surperfluous employer contribution reserve

Art. 18 Cost participation

Art. 19 Interest

Art. 20 Omissions in the Fee Schedule

Art. 21 Amendments

Art. 22 Language and gender

Art. 23 Jurisdiction and governing law

Art. 24 Effective date

Partial and Total Liquidation Regulations

Relying on Article 9 of the Charter of Liberty BVG Collective Foundation (the Foundation), the Board of Trustees adopts the following Regulations:

Art. 1 Purpose and scope of Regulations

These Regulations govern the conditions and procedure for a partial or total liquidation of (occupational) pension funds within the Foundation (at the level of the individual pension funds, or an accounting group, within the meaning of the Rules of Procedure [Pool Invest or Mandate Invest]), subject to statutory limits.

General provisions

Art. 2 Departing headcount/members with incapacity for work

- 1 The departing headcount includes all the exiting pension funds, namely all active members and pensioners leaving the Foundation on the partial liquidation reference date in accordance with Article 4, be it:
 - a) as a result of the total or partial liquidation of one or more affiliation contracts; or
 - b) at affiliated pension fund level, as a result of a significant reduction in employee headcount or a restructuring of the affiliated employer.
- 2 An affiliation contract shall be deemed to have been partially terminated if all active members and any pensioners leave the pension fund, but at least one pensioner or incapacitated member remains in the pension fund.
- 3 Incapacitated members shall count as active members for the purpose of these Regulations. An incapacitated member, within the meaning of these Regulations, is a member with an incapacity for work who has an ongoing claim to a contribution waiver if, on the partial liquidation reference date, the longest waiting period for all regulatory disability benefits has not yet expired or the Foundation has not yet received the requisite information enabling it to grant or deny a disability pension.
- 4 (effective from 1 January 2021)
Members who leave compulsory insurance after reaching the age of 58 in accordance with Article 47a BVG, and have applied to maintain their insurance with the Foundation or their existing pension fund shall, for the purposes of these Regulations, be deemed active members of the relevant affiliated pension fund or accounting group within the meaning of the Rules of Procedure.

Art. 3 General principle

In principle, if the conditions for a partial liquidation are met, the exiting pension funds are entitled to:

- a) the transfer of the pension assets (termination payment) of the departing active members and pensioners;
- b) the proportional transfer of the actuarial provisions and investment fluctuation reserves; and
- c) the proportional transfer of the non-committed assets or deficit. The actuarial deficit, if any, shall be proportionally deducted from the termination payment provided this does not reduce the BVG retirement savings capital.

Art. 4 Reference date and basis/Calculation of non-committed assets or deficit (underfunding)

- 1 The reference date for the partial liquidation is the balance sheet reference date (31 December) closest to the date of the relevant partial or total liquidation event (partial or total termination of the affiliation contract, end of workforce downsizing or corporate restructuring). In justified cases of a partial liquidation, the pension fund committee may, in consultation with the Foundation, set a different reference date. This reference date shall be authoritative for determining the accounting group or pension funds and the group of members affected by the partial liquidation, and for establishing the amount of the non-committed assets or deficit (underfunding), as well as the investment fluctuation reserves and actuarial provisions for an accounting group or at pension fund level.
- 2 The amount of non-committed assets or deficit (underfunding) shall be determined relying on the annual balance sheet prepared as at 31 December in accordance with Swiss GAAP FER 26 (annual financial statements comprising the balance sheet, operating account and notes) and an actuarial partial liquidation balance sheet. Assets and liabilities shall be valued, and provisions and reserves created, following uniform and continuously applied principles. The expected costs of a partial or total liquidation, any stamp duties in connection with transfers of securities, and the continuance interests of the remaining members and pensioners must be taken into account. The audited annual financial statements as at the partial liquidation reference date (31 December) shall be authoritative. The Board of Trustees or the Foundation shall determine the funds to be transferred or the deficit to be deducted.
- 3 If the reference assets or liabilities change by more than 5% between the partial liquidation reference date and the date the funds are transferred (based on interim financial statements in the course of a year, and on the audited annual financial statements at the end of the year), the non-committed assets or deficit, any provisions to be transferred, and the investment fluctuation reserve in an accounting group or at the pension fund level, shall be adjusted accordingly.

Partial or total liquidation of a pension fund

Art. 5 Conditions for a partial liquidation

- 1 The conditions for a partial liquidation of a pension fund are satisfied when:
 - a) over one year, the workforce of the affiliated employer undergoes a significant reduction as a result of economically justified lay-offs which entail the non-voluntary departure of a significant number of active members or the disposal of a significant portion of the retirement savings capital of the pension fund;
 - b) the company of the affiliated employer undergoes restructuring which results in the non-voluntary departure of a significant number of active members or the disposal of a significant portion of the retirement savings capital of the pension fund over the course of one year. Restructuring of a company means measures undertaken by the employer which are not primarily aimed at reducing the number of jobs and laying-off employees. Restructuring consists rather of organisational measures designed to discontinue activities which were previously performed by the company, or to spin-off entire business units to another company;
 - c) the affiliation agreement is partially terminated, within the meaning of Article 2(2) above, and the additional materiality requirements under Article 5(6) are satisfied.
- 2 For the purposes of paragraph 1(a) above, "significant" means, relative to the active headcount before the reduction in workforce, a reduction of:
 - for a headcount of between 1 and 10 active members: at least 4 non-voluntary departures and 25% of the retirement savings capital;
 - for a headcount between 11 and 25 active members: at least 6 non-voluntary departures and 20% of the retirement savings capital;
 - for a headcount between 26 and 100 active members: at least 10 non-voluntary departures and 15% of the retirement savings capital;
 - for a headcount of over 100 active members: non-voluntary departures representing at least 10% of the total active headcount and 15% of the retirement savings capital.
- 3 For the purposes of paragraph 1(b) above, "significant" means, relative to the active headcount before the start of the restructuring, a reduction of:
 - for a headcount of between 1 and 10 active members: at least 3 non-voluntary departures and 25% of the retirement savings capital;
 - for a headcount of between 11 and 25 active members: at least 4 non-voluntary departures and 20% of the retirement savings capital;
 - for a headcount of between 26 and 100 active members: at least 5 non-voluntary departures and 15% of the retirement savings capital;
 - for a headcount of more than 100 active members: non-voluntary departures representing at least 5% of the active headcount and 10% of retirement savings capital.

- 4 The start of the reduction in workforce or restructuring shall be the departure date of the first member to leave the company and the pension fund non-voluntarily at the company's decision. The end shall be the departure date of the last member to leave the company and the pension fund non-voluntarily. A member's departure shall be deemed non-voluntary if the employer gives notice terminating the employment relationship.
- 5 Analogously, the above conditions for a partial liquidation shall also be deemed fulfilled in the case of a significant reduction or a restructuring of an accounting group within the meaning of the Rules of Procedure.
- 6 The termination of an affiliation contract shall be deemed "significant" for the purposes of paragraph 1(c) above and Article 6 below, if
 - a) the liquidation of an affiliation contract is accompanied by the departure of 10% of the active members and 10% of the retirement savings capital in an accounting group within the meaning of the Rules of Procedure (Pool Invest or Mandate Invest); and
 - b) the funded status of the relevant accounting group within the meaning of the Rules of Procedure (Pool Invest or Mandate Invest) is less than 98% or more than 102%.
- 7 In the event of the partial or total termination of one or more affiliation contracts, the conditions for a partial liquidation of an accounting group, within the meaning of the Rules of Procedure, shall be deemed simultaneously fulfilled if the additional materiality requirements under paragraph 6 of this Article are met.

Art. 6 Conditions for a total liquidation

The condition for a total liquidation of a pension fund is met when the whole affiliation contract is liquidated. The entire liquidation of an affiliation contract shall simultaneously satisfy the conditions for partial liquidation of the relevant accounting group, within the meaning of the Rules of Procedure, if the additional materiality requirements under Article 5(6) are met.

Art. 7 Employer's obligation to notify

The Employer shall promptly notify the Foundation of any downsizing of its workforce or restructuring of its company liable to lead to a partial liquidation.

Art. 8 Verifying and ascertaining the conditions

- 1 The pension fund committee is responsible for ascertaining, based on the information provided by the employer in accordance with Article 7 above, that the conditions for a partial liquidation are met in the event of a downsizing or restructuring of the company. The pension fund committee shall report this to the Foundation. In principle, the partial or total liquidation of an affiliation contract automatically triggers a partial or total liquidation procedure if the materiality requirements under Article 5(6) are satisfied; the cases referred to in Article 9 are excepted.

- 2 The Foundation is responsible for implementing the partial or total liquidation of a pension fund. At the Foundation's request, the employer and the pension fund committee shall promptly make available to the Foundation all the information it needs to perform its duties.

Art. 9 Waiving implementation of a liquidation procedure

When an entire affiliation contract is liquidated, the implementation of a total liquidation procedure may be waived if:

- a) the pension fund changes its pension provider completely and the pension fund is not underfunded. In this case, the non-committed assets of the pension fund calculated in accordance with Article 4(2), any provisions maintained at pension fund level, and any investment fluctuation reserves maintained at pension fund level shall be collectively transferred to the new occupational benefits institution; or
- b) when the affiliation contract is terminated, the pension fund has no active members, pensioners or members with incapacity for work (liquidation of an "empty" contract).

Art. 10 Distribution plan and transfer of non-committed assets

- 1 In determining the entitlement to non-committed assets (as at the reference date of the partial or total liquidation of the pension fund or accounting group, both in terms of the group of persons and the relevant reference values in the case of active members who have left the fund prior to this date, the following shall be decisive)
 - a) for active members, the regulatory termination payments;
 - b) for pensioners, 70% of the necessary pension assets or – if the Foundation does not maintain its own actuarial capital/mathematical reserves – 70% of ten times the pensioners' annual pensions.
- 2 In calculating the decisive termination payments, entry transfers of vested benefits, buy-ins and voluntary purchases, repayments of withdrawals for home ownership, and the portion of the divorced spouse's termination payments transferred in during the last 12 months before the partial liquidation reference date shall not enter into account. Withdrawals for home ownership and pension-sharing transfers following a divorce made in the 12 months before the partial liquidation reference date shall be taken into account in the decisive termination payment.
- 3 The pensioner group shall not be taken into account if the arithmetical share per pensioner (calculated in accordance with the reference values under paragraph 1(b) above) averages less than CHF 5'000. If the pensioners are not taken into account, the corresponding share of the pension fund's non-committed assets shall vest with the groups of active members and incapacitated members.
- 4 Distribution key: the non-committed assets shall be determined as a percentage of the regulatory termination payments of the remaining and departing active members and of the pensioners' pension assets (calculated in accordance with the

reference values under paragraph 1(b) above). For the departing active members and pensioners, the individual share of the non-committed assets shall correspond to this percentage.

- 5 As a rule, the non-committed assets to which the departing active members are entitled shall be transferred to their new occupational benefits institution individually and in cash. In the case of individual transfers for departing pensioners, their share shall be paid out in cash as a taxable lump-sum benefit. If at least 10 active members, including any departing pensioners, transfer as a group to another occupational benefits institution (collective departure) and if these funds are fully or partially required to buy into the corresponding reserves of the receiving occupational benefits institution, their share of the non-committed assets shall be transferred collectively. The Board of Trustees shall determine whether the conditions are met.
- 6 The portion of non-committed assets attributable to the remaining active members and pensioners shall remain in the relevant pension fund without individual apportionment.

Art. 11 Collective entitlement to actuarial provisions and investment fluctuation reserves

- 1 A departure shall be deemed a collective departure if at least 10 active members, including any departing pensioners, transfer together as a group to another occupational benefits institution.
- 2 In the event of a collective departure, in addition to the entitlement to non-committed assets, there is also a collective proportional entitlement to any actuarial provisions maintained at pension fund or accounting group level, provided and to the extent that actuarial risks are also transferred, and a collective proportional entitlement to the investment fluctuation reserve maintained at pension fund or accounting group level.
- 3 The collective entitlement to the actuarial provisions of the pension fund shall only inure to the members for whom the provisions were created. The collective entitlement shall be determined according to the calculation rules that were applied to determine the existing provisions.
- 4 A collective entitlement to provisions for mortality risks shall only exist if the mortality risks are reduced as a result of the departure.
- 5 The entitlement to the investment fluctuation reserve is proportionate to the entitlement to the pension assets. In determining the entitlement to the investment fluctuation reserve, the contribution of the departing members to the creation of the reserve shall be taken into account.
- 6 There is no collective entitlement to actuarial provisions and fluctuation reserves if the partial liquidation was caused by the departing group.

Art. 12 Compensating a deficit (underfunding)

- 1 If, instead of non-committed assets, there is a deficit in accordance with Article 4(2), the deficit shall be charged proportionally to the termination payments or (pension) assets to be transferred for the departing members and pensioners unless the employer funds the deficit. The partial liquidation, i.e. the departure of pensioners, shall not lead to a further decrease in funded status (or an increase in the deficit) of the relevant pension fund or accounting group, within the meaning of the Rules of Procedure.
- 2 For the determination of the decisive termination payments, entry transfers of vested termination benefits, buy-ins and purchases, repayments of withdrawals for home ownership and any pension-sharing amounts received from the divorced spouse in the 12 months before the partial liquidation reference date shall not be taken into account. Withdrawals for home ownership and pension-sharing transfers following divorce made in the 12 months before the partial liquidation reference date shall be offset against the decisive termination payments.
- 3 The shares of the deficit attributable to the departing members shall be accounted individually. The retirement savings capital pursuant to Article 15 BVG may not be reduced thereby and are guaranteed in all cases.
- 4 The portion of the deficit attributable to the remaining active members and incapacitated members shall remain in the relevant pension fund or accounting group of the Foundation without individual apportionment.

Procedure and enforcement

Art. 13 Decision validating a partial or total liquidation

- 1 The facts pertaining to the partial or total liquidation of a pension fund, amount of non-committed assets or deficit, and distribution plan shall be documented in writing in a decision of the Board of Trustees, reached in consultation with the pension fund committee, validating the partial or total liquidation. In the cases referred to in Article 9, the validation decision relates only to the facts for waiving implementation of a procedure.
- 2 For pension funds with individual asset management (Mandate Invest), the pension fund committee shall decide if the departing pension assets should be paid in cash or in securities together with the associated investment fluctuation reserves.

Art. 14 Implementation of a partial or total liquidation

- 1 If the Board of Trustees decides to conduct a partial or total liquidation of one or more pension funds, or of an accounting group, it shall in particular establish the event that triggered the partial or total liquidation, the exact time, and the departing headcount.

- 2 The Board of Trustees shall decide the amount of any advance payments to the new occupational benefits institution(s).
- 3 The Foundation may provisionally reduce individual vested termination benefits if the conditions justifying a partial or total liquidation become apparent and one or more pension funds or an accounting group are clearly underfunded. The provisional reduction shall only apply to members liable to be affected by the partial or total liquidation. It must be expressly designated as such. Upon completion of the partial or total liquidation procedure for one or more pension funds or an accounting group, the Foundation shall prepare a final statement of account.
- 4 If, in the event of a deficit, the vested termination benefit was transferred without any reduction, or with an insufficient reduction, the member concerned shall repay the excess amount transferred.

Art. 15 Information for active members and pensioners

- 1 The Board of Trustees shall inform members and pensioners in writing through the pension fund committee about:
 - a) the existence and grounds for a partial or total liquidation, and the partial liquidation procedure;
 - b) the partial liquidation reference date;
 - c) the total amount of non-committed assets, or deficit;
 - d) the departing headcount and the distribution plan and key;
 - e) where applicable, the amount apportioned to the person concerned, or that deducted, in Swiss francs;
 - f) the amount and composition of any collective transfers of actuarial provisions and investment fluctuation reserve;
 - g) the form of the transfer (individual or collective);
 - h) the possibility of filing an objection with the Board of Trustees, and an appeal with the Regulatory Authorities.
- 2 Members and pensioners may apply to inspect the partial liquidation balance sheet, the financial statements and other relevant documentation with the Board of Trustees, provided there are no data protection reasons against it. The Board of Trustees shall set a 30 day time limit to inspect the documentation. If differences cannot be settled by mutual agreement, the Board of Trustees shall set the members and pensioners concerned a 30-day deadline for the Regulatory Authority to examine and decide on the conditions, procedure and distribution plan.
- 3 Members and pensioners do not need to be informed if the partial liquidation of the pension fund is the result of a partial liquidation of the affiliation contract and the following circumstances apply:
 - a) the pension fund is not underfunded and has no non-committed assets; or
 - b) the pension fund has very few non-committed assets (less than 5% of the total pension assets of the active and incapacitated members of the pension fund), all active members including any pensioners are transferring to the same new occupational benefits institution, and the remaining pensioners are not taken into account in the apportioning of non-committed assets under Article 10(3).

- 4 If an application for a partial liquidation was made but denied by a decision of the Board of Trustees after examining the facts, the latter shall inform the applicants in writing about the denial and about their rights.

Art. 16 Enforcement

- 1 Once the distribution plan has become legally binding, it shall be enforced.
- 2 The distribution plan can be enforced when:
 - a) no objections have been filed with the Board of Trustees, or any objections that were filed have been settled, within the 30 day time limit;
 - b) the Regulatory Authority has not been asked to review the Board of Trustees' decision on the objection;
 - c) in the case of a request for review, the decision of the Regulatory Authority has become final; or
 - d) an appeal filed against the decision is not granted suspensive effect.
- 3 The auditors shall examine and confirm the due and proper implementation of the partial liquidation.

Art. 17 Superfluous employer contribution reserve

If, when a pension fund is partially or totally liquidated, an employer contribution reserve exists and can no longer be used for its designated purpose because the employer no longer has any insurable employees, the employer contribution reserve shall be released and allocated to the non-committed assets of the pension fund.

Art. 18 Cost participation

To cover the expenses in connection with the partial or total liquidation of a pension fund, cost participation fees will be charged in accordance with the Fee Schedule.

Art. 19 Interest

The entitlement to non-committed assets, actuarial provisions and investment fluctuation reserves shall not bear interest during the partial or total liquidation procedure. Once the procedure is completed, interest in arrears shall be payable after the expiry of a 30-day time limit. Interest on arrears shall be charged at the minimum interest rate according to the BVG.

Art. 20 Omissions in the Regulations

Any cases that are not covered by these Regulations shall be settled by the Board of Trustees by analogy and in compliance with statutory prescriptions.

Art. 21 Amendments

The Board of Trustees may decide to amend these Regulations at any time within the limits of the law, ordinances and the Charter of the Foundation. The Foundation shall inform members in an appropriate form about the adoption and amendment of these Regulations. The current version is freely available at www.liberty.ch and may be obtained from the Foundation. The Regulations and any subsequent amendments thereto shall be submitted to the Regulatory Authority.

Art. 22 Language and gender

All regulations shall be construed and interpreted in the German-language version. Words in the male form apply indifferently to men and women.

Art. 23 Jurisdiction and governing law

These Regulations are governed by Swiss law. Disputes which can be appealed in accordance with Article 74 BVG shall be submitted to the jurisdiction of the Federal Administrative Court. Disputes between members, other entitled parties and the Foundation shall be submitted to the jurisdiction of the courts in accordance with Article 73 BVG.

Art. 24 Effective date

- 1 These Regulations were adopted by the Board of Trustees on 1 January 2020 and enter into force on even date, once the Regulatory Authority has given its approval. They replace the previous partial liquidation regulations of the Foundation and the regulations for the partial and total liquidation of pension funds, both dated 26 June 2009.
- 2 The regulations applicable are those in force at the occurrence of the relevant event, whereby these Regulations shall apply to all authoritative events on or after 1 January 2020. The date of the authoritative event shall be the end date of the downsizing or restructuring, or, in the event of a partial or full termination of an affiliation contract, the liquidation date.

Schwyz, 25 September 2020

Board of Trustees of Liberty BVG Collective Foundation