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# *Partial Liquidation Regulations*

Compacta collective Foundation LPP

With effect from 1 January 2021



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## **Art. 1 General information**

1. These Regulations govern the conditions and processes for the partial liquidation of the Foundation's respective pooled assets (investment vehicle) as well as the partial or complete liquidation of pension schemes and the partial liquidation of the Foundation.

2. Unless otherwise stated, the Regulations governing the investment vehicles, pension schemes and the Foundation shall apply.

3. The Foundation will determine how a partial liquidation is to be implemented. The partial or complete termination of an affiliation agreement will always trigger the partial or complete liquidation of the pension scheme (please refer to Article 2(B)(5) for the exception).

4. The Foundation is responsible for implementing the partial or complete liquidation of a pension scheme. Upon request, the employer and the pension fund commission are obliged to promptly provide the Foundation with all the information it requires to complete its task.

## **Art. 2 Conditions**

### **A. Investment vehicles**

1. The conditions governing the partial liquidation of an investment vehicle have been met when:

- a. the number of insured persons within the investment vehicle has been significantly reduced;
- b. affiliation agreements have been terminated.

2. A reduction in the number of insured persons in an investment vehicle is significant if it constitutes at least 10% of the number of insured persons in the investment vehicle and, as a consequence, the retirement assets of the investment vehicle are reduced by at least 10%. The reduction is the outcome of a termination for economic

reasons by an affiliated company or an anticipated termination by an employee.

3. The termination of affiliation agreements by an employer or the Foundation will only lead to a partial liquidation, if at least 10% of the portfolio of active insured persons and pensioners in the investment vehicle and at least 10% of the retirement assets of the active insured persons and pensioners' actuarial reserves are withdrawn from the investment vehicle as a result. Only affiliation agreements that have been in force for at least five years will be taken into account when meeting these quotas. Contracts terminated during a financial year, i.e. from 1 January to 31 December, are considered.

### **B. Pension schemes**

1. The conditions governing the partial liquidation of a pension scheme have been met when:

- a. the company affiliated with the Foundation significantly reduces its workforce for economic reasons and this results in the involuntary withdrawal of a significant portion of the active insured persons and a significant portion of the retirement assets of the pension scheme;
- b. the company affiliated with the Foundation is restructured and this measure entails the involuntary withdrawal of a significant portion of the active insured persons and a significant portion of the retirement assets of the pension scheme. Restructuring occurs when an affiliated employer's former areas of activity are merged, discontinued, sold, outsourced or changed in another way. However, restructuring is not primarily interpreted as a reduction in staff. It refers to matters such as the complete or partial closure or outsourcing of parts of the business to other employers, causing the insured members to leave the occupational pension scheme. Neither

new ownership where members of staff remain in the occupational pension scheme nor the reshaping of the organisational structure where there are no redundancies qualify as restructuring.

- c. The affiliation agreement is completely or partially terminated when the active insured persons leave the pension scheme and the pensioners are all transferred to a new occupational pension scheme.

2. A reduction in members according to sections 1(a) and 1(b) is significant if it is carried out to the following extent, based on the number of active insured persons prior to the start of the reduction in workforce or restructuring:

- up to 10 insured persons: at least three involuntary withdrawals and 30% of the retirement assets of the outgoing pension scheme;
- between 11 and 50 insured persons: at least 5 involuntary withdrawals and 20% of the retirement assets of the outgoing pension scheme;
- more than 50 insured persons: at least 10% of the active insured persons and 10% of the retirement assets of the outgoing pension scheme.

3. Staff reduction/restructuring begins on the date the first insured person involuntarily leaves the pension scheme. It ends on the date the last insured person leaves the pension scheme.

A decisive factor is a reduction in the workforce or restructuring that takes place within a period of 12 months. If the reduction takes place over a longer or shorter period of time, that period of time is decisive.

4. When an insured person leaves the scheme, it is deemed to be involuntary if their employment contract has been terminated by the employer for economic reasons. Leaving is also deemed to be involuntary when insured persons resign within 6 months of becoming aware that there will be staff reductions or restructuring, either because they wish to avoid being dismissed by their employer or because they do not accept their new employment conditions. Involuntary departures for other reasons such as the expiry of fixed-term employment contracts, disciplinary or performance-related terminations or transferring to the Foundation's own portfolio of pensioners owing to early or normal retirement, death or disability are not taken into account when determining the number of members that have left.

5. The conditions for the complete liquidation of a pension scheme are met when the affiliation agreement has been completely terminated. If an affiliation agreement has been completely terminated, all the insured employees and the pensioners of the previously affiliated employer will be included in the number of leavers, provided this is consistent with the provisions of the affiliation agreement. In the event that the affiliation agreement is completely terminated, the procedure for complete liquidation can be waived if the pension scheme does not have any active insured persons or pensioners at the time that the affiliation agreement was terminated ("empty pension scheme").

6. Employers are required to immediately notify the Foundation's CEO about reductions in the workforce or the restructuring of their company in accordance with Article 2(B) paragraphs 1(a) and (b). In particular, information concerning the circumstances of the staff reductions, the end of employment relationships and the reason for layoffs is to be provided.

## **C. The Foundation**

1. The conditions governing the partial liquidation of the Foundation have been met when:

- a. there has been a significant reduction in the portfolio of insured persons;
- b. companies are being restructured;
- c. affiliation agreements have been terminated.

2. A reduction in the Foundation's portfolio of insured persons is significant if it constitutes at least 10% and the retirement assets are reduced by at least 10% as a result. The reduction is the outcome of a termination for economic reasons by an affiliated company or the anticipated termination by an employee.

3. Restructuring of companies will lead to the partial liquidation of the Foundation if the portfolio of insured persons is reduced by least 5% and the retirement assets are reduced by at least 5%, and the reductions are due to restructuring in accordance with Article 2(B) clause 1(b).

4. The termination of affiliation agreements by an employer or the Foundation will only lead to partial liquidation if at least 5% of the portfolio of active insured persons and pensioners and at least 5% of the retirement assets of the active insured persons and pensioners' actuarial reserves are withdrawn from the Foundation as a result. Only affiliation agreements that have been in force for at least five years will be taken into account when meeting these quotas. Contracts terminated during a financial year, i.e. from 1 January to 31 December, are considered.

### **Art. 3 Reference date**

The reference date for a partial liquidation owing to a reduction in the workforce will be the balance sheet date that is closest to the start of the reduction in the workforce or company restructuring.

When there is a partial or complete liquidation as a consequence of the partial or complete termination of an affiliation agreement, the reference date is the date when the affiliation agreement is terminated. If the affiliation agreement is terminated on a different date, the reference date will correlate to 31 December in the year the agreement was terminated.

This reference date is definitive for determining the amount of free resources and the shortfall (insufficient cover) or the technical provisions.

### **Art. 4 Free resources and shortfall (insufficient cover)**

1. The Foundation's annual financial statements audited by the auditing body on the reference date for the partial liquidation and according to Swiss GAAP FER 26 are authoritative.

2. If there is a negative result (insufficient cover) and if there is an employers' contribution reserve with a stipulated waiver of usage, this will be taken into account up to the amount that compensates for the shortfall accrued in the pension scheme. Upon completion of the partial or complete liquidation, the employers' contribution reserve with the stipulated waiver of usage that has been allocated in this way will be released for the benefit of the insured persons who are leaving to the extent that it applies to the unfunded retirement assets to be transferred. If there is a shortfall (insufficient cover) and, owing to the protection of the OPA assets, the full amount of the shortfall cannot be charged to the exiting portfolio, the employer must bear the non-reducible amount. The employer must also bear a non-reducible shortfall that is attributable to an exiting pension portfolio.

3. If there is a positive result, the required level of the value fluctuation reserves will be used for the remaining pension capital. If the remaining funds exceed the required level of value fluctuation reserves, the pension scheme has free resources.

4. If significant changes of at least 10% are reflected in the assets and liabilities between the reference date for the partial liquidation and the transfer of the retirement assets of the active insured persons and the actuarial reserves of the pensioners, the free resources or shortfall (insufficient cover) will be adjusted accordingly. The same applies to any collective claims to value fluctuation reserves or actuarial reserves.

5. In the event of a partial liquidation, if an employers' contribution reserve exists but can no longer be used for its purpose because the employer no longer employs staff to be insured or will no longer employ staff to be insured in the foreseeable future, the employers' contribution reserve will be released and allocated to the free resources of the pension scheme.

6. If the free resources in the corresponding investment vehicle amount to less than 5% of the retirement assets of the active insured persons remaining in the investment vehicle and the retirement assets of the people leaving the pension scheme, and amount to less than CHF 200.00 per person on average, free resources will not be distributed. In the investment vehicle, the group of pensioners who are leaving will not be taken into account if the share per pensioner amounts to less than CHF 200.00 on average.

If the free resources in the pension scheme amount to less than 5% of the retirement assets of the active insured persons remaining in the pension scheme and the pension capital of the people leaving and less than CHF 1,000.00

per person on average, the free resources will not be distributed.

7. The shares of the free resources allocated to active insured persons who are leaving are generally specified individually. The settlement of extralegal social claims or claims relating to labour laws by way of the distribution of free resources is not permitted.

8. The shares of the shortfall attributable to the active insured persons who are leaving are deducted from their vested benefits on an individual basis. If the unreduced or insufficiently reduced termination benefit has already been transferred, the insured person or the occupational pension scheme or vested benefits institution must refund the excess amount that has been transferred.

9. The free resources or shares in a shortfall attributable to active insured persons and pensioners will be retained and not individually allocated.

#### **Art. 5 Collective exit**

1. If at least ten active insured persons transfer to another occupational pension scheme as a group (collective exit), their share of the free resources is transferred collectively. In the event of a collective exit, there is a collective entitlement to the free resources as well as a collective entitlement to a pro rata share of the value fluctuation reserves, if these exist. The entitlement to value fluctuation reserves corresponds proportionally to the entitlement to the retirement assets; the contributions made to the value fluctuation reserves by the exiting group are taken into account. The amount is determined proportionally on the basis of the retirement assets of the active insured members of the exiting group in relation to all the retirement assets of all the insured persons for whom the value fluctuation reserves were set up.

2. If all the active insured persons, including any pensioners, transfer to a new occupational pension scheme, their share of free resources and value fluctuation reserves will be transferred. Any shortfall will be individually deducted from the retirement assets of the active insured person but the minimum OPA retirement assets cannot be reduced.

3. The actuarial reserves for the investment vehicle will be transferred proportionally, provided that the corresponding actuarial risks are also transferred.

#### **Art. 6 Distribution plan**

The individual distribution of the share of the free resources or shortfall (insufficient cover) attributable to the active insured persons or pensioners is proportional to the retirement assets (as per the reference date of the partial liquidation or the previous leaving date).

#### **Art. 7 Process**

1. Essential facts, such as facts about the partial liquidation of an investment vehicle, pension scheme or the Foundation or about the complete liquidation of a pension scheme, the amount of the free resources, the value fluctuation reserves or shortfall, the group of people affected and the distribution plan must be recorded in writing as a decision of the Foundation Board. No such decision is required for “empty” pension schemes.

2. As soon as the Foundation Board has decided and the distribution plan has been drawn up, the Foundation will inform all those affected (active insured persons and pension recipients) in writing of the reasons for the partial liquidation, the group of people affected, the amount of free resources, the value fluctuation reserves or shortfall, the individual or collective share and the distribution plan. The Foundation will also provide timely and full information

about publication in the Swiss Official Gazette of Commerce. While respecting the data privacy of the individual beneficiaries, the people concerned have the right to inspect the records, especially the distribution plan, at the Foundation within 30 days from the date of the notification about the information and to raise any objections to the decision of the Foundation Board. If existing disputes cannot be resolved by agreement, the Foundation will give the persons concerned 30 days to have the supervisory authority review the conditions, procedure and the distribution plan and decide on these.

3. Once the distribution plan is legally binding, it is considered to be implemented. The distribution plan is legally binding if:

- no objections have been raised, or
- all objections have been settled by agreement or none of the persons concerned has approached the supervisory authority within the specified 30-day period, or
- the supervisory authority has come to a legally binding decision on the conditions, procedure and distribution plan (certification of legal validity).

4. If the employer has failed to pay the due contributions by the time of the partial or complete liquidation or if bankruptcy or similar proceedings have been initiated against this employer, there will be an appropriate value adjustment and the outstanding amount will be provisionally written down to zero when the free resources are being determined. However, if the employer or a guarantee fund can subsequently pay the written-off amount either in part or in full, the entitlements of those affected will be recalculated and additional payments made while taking into account the funds already transferred.



5. Additional costs may be charged to the pension scheme affected or debited to income with regard to the extraordinary expenses involved as part of the partial or complete liquidation.

6. The Foundation will deal with cases that are not expressly covered by these Regulations in accordance with the law.

7. When winding up the Foundation (complete liquidation according to Article 53(c) OPA), the supervisory authority will decide whether the conditions have been met and the processes completed and approve the distribution plan.

8. The auditors will examine the proper implementation and provide a written record of the results in an annual report to the Foundation Board.

#### **Art. 8 Entry into force**

Once approved by the authorised supervisory authority, these Partial Liquidation Regulations will take effect on 1 January 2021 and replace those of 1 January 2010. Partial or complete liquidations with a cut-off date before 1 January 2021 shall comply with the previous Partial and Complete Liquidation Regulations of 1 January 2010. The Foundation Board may amend the Partial Liquidation Regulations at any time, subject to the approval of the supervisory authority. The German version is the definitive text for interpretation.

Aarau, 5 November 2020





