

# **Regulations on the Partial and Total Liquidation of Pension Funds**

Baloise Collective Foundation BVG

December 2009 Edition

# Regulations on the Partial and Total Liquidation of Pension Funds

Baloise Collective Foundation BVG

## 1. Subject and terms

### 1. Subject

The Board of Foundation issues the following regulations in accordance with Art. 53b ff. of the Federal Act of 25 June 1982 on Occupational Retirement, Survivors' and Disability Pension Plans (BVG) and in compliance with the Organisation Regulations of 23 December 2004 of the Baloise Collective Foundation BVG, Basel (hereinafter referred to as "the Collective Foundation"). The regulations govern the conditions and procedure for a partial or total liquidation of the Collective Foundation's pension funds.

### 2. Terms

- 2.1. Active persons: all employees subject to the Swiss Federal Law on Old Age and Survivors' Insurance (AHV) who have turned 17 years of age and whose assumed AHV salary exceeds the minimum limit set by the Federal Council (the "minimum salary" in accordance with Art. 7 para. 2 BVG) and for whom no benefits are due.
- 2.2. Period of insurance: the insurance period corresponds to the number of whole contributory years measured from the commencement of retirement saving at the earliest. The insurance period ends:
  - on the reference date in the case of active, partially disabled and fully disabled persons;
  - on the retirement date in the case of retired persons;
  - on the date of death of the insured person where the death occurs prior to retirement, or on the date of retirement where the insured person dies after retirement in the case of recipients of spouses' and life partners' pensions;
  - on the date of withdrawal from the pension fund in the case of persons who have left the pension fund.
- 2.3. The employer: the employer affiliated with the pension fund concerned.
- 2.4. Unallocated assets: assets of the pension fund that are not tied or allocated to a specific purpose.
  - Tied funds include, for example, age assets.
  - Funds allocated to a specific purpose include, for example, reserves to finance employer contributions and bridging pensions.
- 2.5. Shortfall: a shortfall giving rise to an underfunding of the pension plan as set out in Art. 44 of the Ordinance on the Occupational Retirement, Survivors' and Disability Benefit Plans (BVV2). A shortfall can only arise in exceptional cases, for example, where pension funds were granted a loan consisting of tied funds before 1 January 2005.
- 2.6. Individual withdrawal: all withdrawals that are not collective withdrawals as defined in these regulations.
- 2.7. Collective withdrawal: the collective transfer of a group of beneficiaries to another pension scheme.
- 2.8. Reference date: see paragraph 10.
- 2.9. Distribution amount:
  - in the case of active persons, the age assets as at the reference date;
  - in the case of partially disabled and disabled persons for whom a benefit has come due prior to the expiry of the waiting period, the age assets comprising the active component and disability component as at the reference date;
  - in the case of retired persons, the policy reserves as at the reference date;
  - in the case of beneficiaries of spouses' and life partners' pensions, the age assets as at the date of death of the insured person where death occurs prior to retirement, or the policy reserves of the current pension as at the reference date where death occurs after retirement;
  - in the case of persons who have withdrawn from the pension fund prior to the reference date, the age assets as at the date of withdrawal from service or as at the date of retirement with lump-sum payment or as at the date of death with lump-sum payment.

## Regulations on the Partial and Total Liquidation of Pension Funds

Baloise Collective Foundation BVG

### 2.10. Involuntary withdrawal:

- a withdrawal as a result of the termination of employment by the employer; or
- a withdrawal as a result of a termination of employment by the employee, provided this is contingent upon a planned staff reduction or restructuring on the part of the employer and the employee's reason for terminating the employment is in order to pre-empt a termination of the employment by the employer.

2.11. Persons insured by the pension fund: all active persons and pensioners (beneficiaries of the Old Age, Survivors' and Disability pensions) who are members of the respective pension fund.

2.12. Pension fund: the organisational entity affiliated with the Collective Foundation.

## 2. General provisions

### 3. Implementation

The Manager of the Collective Foundation implements the liquidation of the pension fund in accordance with these regulations.

### 4. Principles for the distribution of unallocated assets / allocation of shortfall amounts

- 4.1. The distribution of unallocated assets or the allocation of shortfall amounts is conducted exclusively according to objective criteria and based on the principle of equal treatment. In the case of a partial liquidation, an interest in the continued existence of the pension fund is taken into account to a reasonable extent.
- 4.2. The partial liquidation of a pension fund will not be implemented if the unallocated assets of the pension fund at the reference date amount to either:
  - less than 5% of the total of distribution amount as specified by paragraph 2.9; or
  - less than CHF 1'000 on average per active person to be taken into account (paragraph 12).
- 4.3. The total liquidation of a pension fund will not be implemented if the pension fund is transferred in its entirety to new pension provider and there is no shortfall.
- 4.4. Possible claims to a share of the unallocated assets of the pension fund in accordance with these regulations only arise on commencement of the liquidation procedure.
- 4.5. In the case of individual withdrawals, there is an entitlement to a share of the unallocated assets. In the case of collective withdrawals, there is an individual or collective entitlement. The Trustees of the Fund determine whether there is an individual or collective entitlement in the case of a collective transfer.

### 5. Duty of the employer/Trustees of the Fund to notify and cooperate

- 5.1. The employer and the Trustees of the Fund are obliged to report all situations that could trigger a partial or total liquidation of the fund to the Manager without delay.

- 5.2. In drawing up the distribution plan, the employer and the Trustees of the Fund must collaborate and provide the Manager with all the information and documentation required for the liquidation.

### 3. Conditions

#### 6. Partial liquidation

- 6.1. The conditions for a partial liquidation are considered fulfilled, if:
- 6.1.1. there is a significant reduction in the insured group of persons due to layoffs justified on economic grounds giving rise to the involuntary withdrawal from the pension fund of a significant proportion of the group of active persons; or
  - 6.1.2. the affiliated employer is to be restructured and this results in the involuntary withdrawal of a significant proportion of the group of active insured persons, or the affiliation agreement is terminated and the beneficiaries of old age, disability and survivors' pensions remain members of the pension fund.
- 6.2. Over a one-year period, the following reductions in the insured group of persons or involuntary withdrawals following a restructuring are deemed "significant" as specified in paragraphs 6.1.1 and 6.1.2:
- at least 2 insured persons in pension funds in which there are fewer than 10 persons insured;
  - at least 4 insured persons in pension funds in which there are at least 10 persons and fewer than 40 persons insured;
  - at least 10% of the insured persons in pension funds in which there are at least 40 persons insured.

#### 7. Total liquidation

If all active insured persons and beneficiaries of old age, disability and survivors' pensions withdraw from the Pension Fund, then the condition for a total liquidation of the fund is met, unless there is a justified interest in the continued existence of the pension fund.

## 4. Preliminary procedure

### 8. Initial assessment and decision

- 8.1. As soon as the Manager is notified that the conditions for the liquidation of a pension fund might be met, he or she checks the following as at the reference date:
  - 8.1.1. whether the material conditions of paragraph 6 or 7 are met; and
  - 8.1.2. whether there is an impediment to carrying out the procedure (paragraphs 4.2 and 4.3).
- 8.2. If the conditions for carrying out the procedure are met, then the Manager commences the liquidation procedure and informs the Trustees of the Fund of his or her decision.

## 5. Main procedure

The following paragraphs apply to both partial and total liquidations of pension funds.

### a. Reference date, unallocated assets / shortfall, group of persons taken into account

### 9. Preparation

After commencing the liquidation procedure, the Manager determines:

- 9.1. the fixed reference date for the liquidation (paragraph 10);
- 9.2. the unallocated assets or shortfall if the pension plan is underfunded (paragraph 11); and
- 9.3. the group of persons to be taken into account (paragraph 12).

### 10. Reference date

- 10.1. The reference date is authoritative for determining the group of persons to be taken into account and the value of the unallocated assets or shortfall.
- 10.2. The reference date is the same date as that on which the conditions for the liquidation according to paragraph 6 or 7 are met.
- 10.3. In a case where there is a "significant" reduction in the group of insured people (paragraph 6.1.1), this is the date on which the last insured person withdrew from the pension fund and whose withdrawal fulfilled the material conditions for a partial liquidation.  
In a case where there is a restructuring of the employer (paragraph 6.1.2), the reference date is the date on which the restructuring enters into force or on which the first insured persons withdraw from the pension fund as a result of the restructuring.
- 10.4. The Manager can specify the next 31 December as the reference date.

### 11. Unallocated assets – shortfall (underfunding)

The Manager draws up the balance sheet for the pension fund detailing the unallocated assets or shortfall (underfunding) as at the reference date.

## Regulations on the Partial and Total Liquidation of Pension Funds

Baloise Collective Foundation BVG

### 12. Group of persons taken into account

- 12.1. The unallocated assets or shortfall amounts calculated in accordance with paragraph 11 are distributed to the pension fund's group of insured persons. Persons who have left the pension fund (withdrawal, retirement with full lump-sum payment or death) within the three-year period prior to the reference date are taken into account, provided the employer was affiliated with the Collective Foundation at the relevant effective date and subject to paragraphs 12.2 and 12.3.
- 12.2. In exceptional cases, the Manager can extend the three-year period as specified by 12.1 up to a maximum period of five years.
- 12.3. Persons subject to compulsory insurance who have been employed for less than 1 year are not taken into account.

### b. Distribution plan

### 13. Distribution formula

- 13.1. A distinction is made between insured persons leaving the pension fund and insured persons who are remaining as members of the fund. Those who remain are treated in the same way as those who have already left.

First, the unallocated assets are distributed collectively to the entire group of insured persons remaining in the fund and the entire group of those leaving the fund in proportion to the size of each respective group.

In cases where a further individual distribution is to be undertaken, the following two criteria determine the distribution plan:

- The period of insurance (paragraph 2.2)
- The applicable distribution amount (paragraph 2.9)

- 13.2. The amount to be distributed is divided equally. Each half is distributed separately according to one of the two criteria.

If the share per pensioner amounts to less than CHF 6'000 on average, then the pensioners are not taken into account in the distribution of the Foundation's unallocated assets. Their share is allocated to the group of active, insured persons.

- 13.3. If there is a shortfall in the balance sheet, then this is distributed among the active persons (excluding the pensioners) as defined by paragraph 12 and based solely on the following distribution criteria:

- 13.3.1. The age assets as at the reference date
- net of portable benefit contributions made to the pension fund, divorce settlements that have been received and purchases of contribution years made during the period of insurance;
  - plus advance payments and divorce settlements that have been paid out during the insurance period in the pension fund.

13.3.2. The period of insurance.

- 13.4. If the outcome of the distribution plan is considered inequitable by the Board of Foundation, then the Board of Foundation will draw up a new distribution plan in compliance with the relevant legal requirements and recognised principles.

- 13.5. The individual shares are offset against the costs, as determined by the schedule of costs that applies at the reference date.

### 14. Information

- 14.1. After drafting the distribution plan, the Manager informs all affected persons of the value of the unallocated assets or shortfall, the distribution formula and each person's individual or collective share.

- 14.2. The Manager ensures that the distribution plan is disclosed on request.

## Regulations on the Partial and Total Liquidation of Pension Funds

Baloise Collective Foundation BVG

### 15. Objections and legal force

15.1. The persons affected have the right to submit a written objection to the distribution plan within 30 days of receipt of the information from the Manager.

15.2. If an objection cannot be resolved by mutual agreement, then the Manager provides the affected persons a period of 30 days in which to have the conditions, procedure or distribution plan reviewed and ruled upon by the supervisory authority.

15.3. If no objections are raised, or if these can be resolved by mutual agreement or as a result of a legally binding decision of the supervisory authority, then the distribution plan enters into legal force.

### c. Implementation

#### 16. Legal force

The distribution plan is only implemented after it has obtained legal force.

#### 17. Application

- 17.1. The individual shares are allocated as follows:
- In the case of active insured persons, disabled persons and persons who have withdrawn from the pension fund, the individual share is transferred as additional age assets, or claimed back or deducted in the case of a shortfall.
  - In the case of pension beneficiaries, pensioners who have received lump-sum payments and beneficiaries of survivors' or disability benefits, the individual share of the unallocated assets is subsequent to the main benefit.

- 17.2. The collective shares are allocated as follows:
- Transfer to the new pension scheme.

#### 18. Interest

18.1. The collective foundation pays interest on the individual and collective shares from the 31st day after all the information required for the transfer has been made available (i.e. the amounts are known and have been communicated). If there is a shortfall, the individual shares will be reclaimed with interest.

- 18.2. The rate of interest is the same as the rate of interest on the "Free reserves" deposit account.

## 6. Special cases

### 19. Material changes in assets between the reference date and settlement

If there are changes in the unallocated assets or the shortfall amount of at least 10% between the reference date of the liquidation and the settlement date, then the shares will be adjusted accordingly.

### 20. Cases not explicitly regulated

Cases not explicitly covered by these regulations are dealt with by the Manager through analogous application of the provisions of these regulations.

### 21. Fluctuation reserves and other provisions

If the pension fund has fluctuation reserves or other provisions as set out in Art. 27h BBV2, then the Trustees of the Fund decide on the collective entitlement to these reserves or other provisions. Paragraph 19 applies mutatis mutandis.

## 7. Entry into force

### 22. Approval and entry into force

These regulations were approved by the Swiss Federal Social Insurance Office and entered into force on 31 December 2009.

**Baloise Collective Foundation BVG**  
c/o Baloise Life Ltd  
Aeschengraben 21  
P.O. Box  
4002 Basel  
Customer Service 00800 24 800 800  
customerservice@baloise.ch  
baloise.ch