Profond

Partial liquidation regulations

effective as of 31 December 2019

Should legal differences arise between the original and the translated version, the German version will prevail.

Table of contents

Contents Page

1. General

Art. 1 Purpose
1 These regulations define the preconditions and procedures for the partial liquidation of the Profond Pension Fund (hereinafter referred to as “Profond”) and of pension schemes affiliated to it.
2 Any situations not explicitly mentioned in these regulations shall be decided by analogous application of their provisions and in compliance with the legal requirements, including in particular Art. 18a FZG, Art. 53d BVG and Arts. 27g and 27h BVV 2.

2. Partial liquidation of Profond

Art. 2 Preconditions
1 The preconditions for a partial liquidation of the pension scheme are fulfilled if
- there has been a reduction in staff numbers at an affiliated company,
- an affiliated company undergoes restructuring or
- an affiliation contract is terminated

and the associated departures from the pension scheme lead to a substantial reduction in Profond’s total membership.
2 The preconditions for the partial liquidation of Profond apply analogously for affiliated professional associations.

Art. 3 Reduction in staff numbers
1 Staff numbers at an affiliated company are deemed to have been reduced if the latter’s headcount de-creases and active insureds leave the pension scheme.
2 The reduction timeframe begins with the first departure and ends with the final departure within 12 months of the relevant decision by the competent executive bodies of the affiliated company. If the reduction timeframe is longer or shorter than 12 months, this period will apply.
3 A substantial reduction in Profond’s total membership is deemed to have taken place if, as a consequence of the reduction in staff numbers, at least 0.3 percent of Profond’s active insureds and at least 0.3 percent of the pension capital of Profond’s active insureds leave Profond within the applicable timeframe.

Art. 4 Restructuring
1 An affiliated company is deemed to be undergoing restructuring if organizational measures are taken which result in the cessation of the company’s previous principal activities, the spin-off of components of its operations, or the takeover of other companies or components of their operations, and these measures lead to the departure of active insureds.
2 A substantial reduction in Profond’s total membership is deemed to have taken place if restructuring results in at least 0.15 percent of Profond’s active insureds leaving and vested benefits of at least 0.15 percent of the pension capital of Profond’s active insureds being transferred.

Art. 5 Termination of the affiliation contract
1 An affiliation contract is deemed to have been terminated if all active insureds collectively leave the pension scheme. Pensioners in the pension scheme shall leave Profond if this is provided for in the affiliation contract.
2 A substantial reduction in Profond’s total membership is deemed to have taken place if termination of the affiliation contract results in at least 0.3 percent of Profond’s active insureds leaving and vested benefits of at least 0.3 percent of the pension capital of Profond’s active insureds being transferred.

Art. 6 Reference dates
1 The reference date for the partial liquidation of Profond or for calculating the amount of uncommitted funds or the shortfall shall be the 31 December closest to the completion of the reduction in staff numbers, the completion of restructuring, or the termination of the affiliation contract.
2 The reference date for determining whether a substantial reduction in Profond’s total membership has taken place is 31 December prior to the commencement of the reduction in staff numbers or the commencement of restructuring, or 31 December of the previous year in the case of termination of the affiliation contract.
3 The reference date for calculating the vested benefits of active insureds shall be the date of departure.
4 The reference date for calculating the pension capital of pensioners shall be the date of departure.

Art. 7 Collective departure
1 If at least 10 insureds in a pension scheme transfer jointly as a group to the same new pension fund at the same time, this will be regarded as a collective departure.
2 All other cases will constitute individual departures.

Art. 8 Uncommitted funds
1 The uncommitted funds will be determined based on Profond’s assets on the reference date of the partial liquidation, which assets will be ascertained on the basis of Profond’s actuarial valuation and commercial balance sheet pursuant to Swiss GAAP FER 26.
2 As long as the target fluctuation reserve has not been achieved, Profond will not have any uncommitted funds.
3 The uncommitted funds will be attributed to departing insureds in proportion to the total pension capital (active insureds and pensioners) as on the reference date.
4 If the relevant assets or liabilities vary by a minimum of 10 percent between the reference date for the partial liquidation and the date on which uncommitted funds are transferred, the uncommitted funds will be adjusted accordingly.

Art. 9 Collective claim to technical reserves and fluctuation reserves

1 If several insureds (i.e. active insureds and pensioners) leave collectively as a group under a partial liquidation of Profond, they will also have a collective pro rata claim to the technical reserves and fluctuation reserves, assuming the departing group contributed to the formation of said reserves.

2 Technical reserves will only be included in the transfer if the corresponding risks are also transferred.

3 The collective claim to technical reserves will be reduced by the extent to which the departing group did not fully buy into the technical reserves. In this case, as of the 6th complete year of affiliation and for every subsequent complete year until the reduction has been offset, said group will have a pro rata claim of 20% to the technical reserves.

4 The collective claim to value fluctuation reserves of departing insured persons is based on the contribution of the pension fund to the formation of the value fluctuation reserve. This is calculated in accordance with Annex 1 to these regulations.

5 If the relevant assets or liabilities vary by a minimum of 10 percent between the reference date for the partial liquidation and the date on which the funds are transferred, the technical reserves and fluctuation reserves to be transferred will be adjusted accordingly.

Art. 10 Shortfall

1 If, as of the reference sheet date of the partial liquidation, a shortfall pursuant to Art. 44 BVV 2, results, this shall be allocated proportionally to the departing persons (i.e. the actively contributing members or the pensioners) in accordance with Annex 2.

2 The proportion of the shortfall attributable to the actively contributing members remaining in the pension fund remains in the pension fund without individual assignment.

3. Partial or total liquidation of a pension scheme

Art. 11 Preconditions for partial liquidation

1 The preconditions for the partial liquidation of a pension scheme are fulfilled if:

– there has been a substantial reduction in staff numbers at an affiliated company or in the number of active insureds in an affiliated professional association and the resulting departures from the pension scheme are leading to the outflow of a substantial portion of pension capital or
– an affiliated company undergoes restructuring and this leads to the departure of a substantial proportion of active insureds and the outflow of pension capital from the pension scheme or
– an affiliation contract is partially terminated (i.e. there are still pensioners in the pension scheme). If the membership agreement of a member of an affiliated professional association is terminated, the preconditions will only be deemed to have been fulfilled if the departure results in a substantial reduction in active insureds and pension capital in the affiliated professional association.

2 A substantial reduction shall be deemed to have taken place if – depending on the number of active insureds in the pension scheme prior to the commencement of the reduction in staff numbers or the commencement of restructuring – in minimum the following decreases in active insureds and vested benefits occur:

– Pension schemes with up to 10 active insureds: at least 3 departures and 25% of the pension capital;
– Pension schemes with 11 to 25 active insureds: at least 4 departures and 20% of the pension capital;
– Pension schemes with 26 to 50 active insureds: at least 5 departures and 15% of the pension capital;
– Pension schemes with more than 50 active insureds: at least 10% of active insureds and 10% of the pension capital.

3 The timeframe of the substantial reduction begins with the first departure and ends with the final departure within 12 months of the relevant decision by the competent executive bodies of the affiliated company. If the reduction timeframe is longer or shorter than 12 months, this period will apply.

4 If the preconditions for a partial liquidation of Profond are fulfilled, the preconditions for the partial liquidation of this pension scheme are also deemed to be fulfilled. The right to implement a total liquidation of this pension scheme remains unaffected.

5 A pension scheme will not be partially liquidated if there are no uncommitted funds available and all liabilities have been settled pursuant to the provisions of the affiliation contract.

Art. 12 Precondition for total liquidation

1 The precondition for the total liquidation of a pension scheme is full termination of the affiliation contract (i.e. all active insureds and any pensioners leave the pension scheme). This applies analogously for the pension scheme of an affiliated professional association.

2 A total liquidation will not be implemented if

a) the pension scheme opts for a complete change of pension provider and the preconditions for a partial liquidation of Profond (Art. 2 ff.) are not fulfilled, or
b) the pension scheme opts for a complete change of pension provider and all liabilities are settled pursuant to the provisions of the affiliation contract, or
c) the pension scheme has neither active insureds nor pensioners at the time the affiliation contract is terminated (liquidation of an “empty” contract).

Art. 13 Reference date

1 The reference date for the partial and total liquidation of the pension scheme or for calculating the amount of uncommitted funds shall be the 31 December closest to the completion of the reduction in staff numbers, the completion of restructuring, or the partial or full termination of the affiliation contract.

Art. 14 Collective departure

1 If at least 3 insureds in a pension scheme transfer as a group to another pension fund (collective departure), their portion of the uncommitted funds shall be transferred collectively.

Art. 15 Uncommitted funds

1 In accordance with Arts. 16 and 17, insureds leaving the pension scheme have a pro rata claim to the uncommitted funds held by the pension scheme (uncommitted funds account).

4. Procedures and implementation

Art. 16 Determining the funds to be distributed/the shortfall

1 If the preconditions for a partial liquidation of Profond and/or the preconditions for the partial or total liquidation of a pension scheme are fulfilled, the funds to be distributed/the shortfall shall comprise in total:

a) a collective claim to technical reserves and fluctuation reserves, which is allocated pro ra-ta to departing insureds under the partial liquidation of Profond (Art. 9);
b) uncommitted funds or a shortfall, which are allocated pro rata to departing insureds under the partial liquidation of Profond (Art. 8 or Art. 10, respectively);
c) uncommitted funds of the pension scheme, which are allocated pro rata to departing insureds under the partial or total liquidation of the pension scheme (Art. 11 or Art. 12, respectively);
d) outstanding liabilities pursuant to the provisions of the affiliation contract.

2 The uncommitted funds available will only be distributed between departing insureds and insureds remaining in the pension scheme if they exceed 5 percent of the remaining pension capital.

3 Any obligation on the employer's part to furnish additional cover pursuant to the affiliation contract with Profond and/or the regulatory provisions of Profond remains unaffected.

Art. 17 Distribution plan

1 Based on the following criteria, Profond's management defines the proportions of the uncommitted funds or of any shortfall attributable to the active insureds and pensioners:

- In the case of the active insureds, the amount of the individual pension capital in place is the decisive criterion. Vested benefits, one-off contributions, purchases of additional benefits, repayments of advance withdrawals to finance residential property and additional credits contributed up to three years prior to the reference date will be deducted. Advance withdrawals to finance residential property and payouts as a result of divorce that were made up to three years prior to the reference date will be added.
- In the case of the pensioners, the amount of pension capital in place is the decisive criterion. Vested benefits, one-off contributions, purchases of additional benefits, repayments of advance withdrawals to finance residential property and additional credits contributed up to three years prior to the reference date will be deducted. Advance withdrawals to finance residential property and payouts as a result of divorce that were made up to three years prior to the reference date will be added.

2 The proportions of the shortfall attributable to the departing active insureds will be deducted individually from their vested benefits provided that the vested benefit is not reduced below the minimum retirement account according to the BVG. If technical reserves (Art. 9) are included pro rata, they are to be reduced in line with Profond's cover ratio and deducted individually from the vested benefits until the reduction has been offset.

3 If the vested benefits have already been transferred without any reduction, the active insureds must reimburse the deduction.

Art. 18 Notification

1 The insureds in the pension scheme (active insureds, pensioners, former insureds) must be notified individually of the partial liquidation in writing. As a minimum, the notification must contain details of the reason for the partial liquidation, the group of beneficiaries affected, the distribution criteria, the individual proportion allocable to the individual insureds and the right to lodge objections.

2 If departing insureds are allocated funds under a partial liquidation of Profond, all Profond Staff Pension Scheme Committees are to be suitably notified, with reference being made to insureds' right to lodge objections and request a review in accordance with paragraphs 3 and 4.

3 Within 30 days of receiving such notification, each insured affected may lodge with the Board of Trustees an objection to the preconditions, the procedure or the distribution plan. Objections must be submitted in writing, stating the reasons.

4 If after hearing the objecting parties, no agreement can be reached between said parties and the Board of Trustees, the Board of Trustees will issue a decision on the objections within a reasonable period of time. This decision will be notified in writing to the group of persons affected by the partial liquidation, stating reasons. At the same time, the Board of Trustees will communicate that those insureds affected can, within 30 days of the announcement, have said decision reviewed by the supervisory authority.

5 If, within the time limit, an affected insured submits to the supervisory authority a request to review the decision on the objections, the supervisory authority will issue a ruling within a reasonable period of time.

6 The distribution plan (including claims arising from collective departures) will be executed once it has become legally binding. It is deemed to be legally binding if

a) no objections were lodged during the periods stipulated, or
b) all objections have been settled amicably, or
c) a legally binding ruling has been made by the supervisory authority.

Art. 19 Responsibilities

1 Profond's management is responsible for implementing the partial liquidation. It will decide whether the preconditions for a partial liquidation pursuant to the present regulations have been fulfilled and will de-

termine the details of the partial liquidation (in particular the reference date of the partial liquidation, individual and collective departure, and distribution plan). It will notify the insureds affected and the respective pension scheme's Staff Pension Scheme Committee of the partial liquidation.
2 The Board of Trustees is responsible for monitoring that the management correctly implements the partial liquidation.
3 The auditors will confirm the orderly implementation of the partial liquidation in the course of their ordinary annual reporting.

5. Concluding provisions

Art. 20 Mandatory notification
1 Affiliated companies and professional associations have a duty to notify Profond truthfully and without delay of any substantial reductions in staff numbers or restructuring measures taking place which could lead to a partial liquidation. At the same time, the company or professional association will disclose the commencement and the conclusion of the reduction in staff numbers and in the number of active insureds.

Art. 21 Costs
1 Costs borne by Profond in connection with the partial liquidation are charged to the pension scheme as incurred.

Art. 22 Transitional provisions
1 If a reduction in staff numbers or a restructuring commences while the Partial liquidation regulations valid as of 1 January 2018 are still in force and the associated departures of active insureds end after entry into force of the present regulations, or if an affiliation agreement is terminated as of 31 December 2019, the latter shall apply.

Art. 23 Entry into force; amendments
1 These regulations are subject to the approval of the supervisory authority and will enter into force on 31 December 2019.
2 The Board of Trustees may amend the regulations at any time in compliance with the legal provisions and subject to the approval of the supervisory authority.

The Board of Trustees
Zurich, 31 October 2019

Annexes to the Partial Liquidation Regulations

Annex 1
Contribution by the Pension Fund to the Value Fluctuation Reserve

1 If the funding ratio according to Profond's annual financial statements (hereinafter referred to as the "funding ratio") at the reference date of the partial liquidation of Profond is higher than or equal to 100% (surplus cover), this annex applies to the contribution of the pension fund to the value fluctuation reserve of Profond (hereafter the "Value Fluctuation Reserve" or "VFR"). The funding ratio according to the revised annual financial statements of Profond on 31.12. must be taken into account prior to the entry into force of the affiliation agreement for the pension fund (hereinafter referred to as the "funding ratio at the start of the contract").

2 The contribution by the pension fund to the value fluctuation reserve is calculated in CHF as follows:

a) as a whole share of the value fluctuation reserve, if the funding ratio at the start of the contract was lower than or equal to 100$:
$VFR_{\text{entire share}}$ = the (pension capital of actively contributing members and pensioners as of the effective date of the partial liquidation) × (the funding ratio as of the partial liquidation date - 100%)

b) as a reduced share of the value fluctuation reserve, if the funding ratio at the start of the contract was higher than 100%:
VFR_{reduced} share = $VFR_{\text{entire share}}$ - the compensation amount at the start of the contract

where the following applies:

(i) The compensation amount at the start of the contract = (pension capital of actively contributing members and pensioners at the start of the contract) × (funding ratio at the start of the contract - 100%)

(ii) If the reduced share of the value fluctuation reserve ($VFR_{\text{reduced share}}$) is less than zero, no portion of the value fluctuation reserve is allocated to the pension fund. In addition, no negative contribution is assigned to it.

Examples

1. Whole share in the value fluctuation reserve (section 2 letter a)

Funding Ratio (FR) $_{\text{at reference date of the partial liquidation (PL)}}$ = 105% $FR_{\text{contract start date}}$ = 98%

Contribution of the pension fund = CHF 10 000 000 (pension capital (PC)$_{PL}$) × 5% = CHF 500 000

2. Reduced share of the value fluctuation reserve (section 2 letter b/i)

FR_{PL}= 105%	$FR_{\text{contract start date}}$ = 102%	
$VFR_{\text{entire share}}$	= CHF 10 000 000 (PC_{PL}) × 5%	= CHF 500 000
Compensation amount$_{\text{contract start date}}$	= CHF 6 000 000 ($PC_{\text{contract start date}}$) × 2%	= CHF 120 000
Contribution of the pension fund	**= CHF 500 000 ./. CHF 120 000**	**= CHF 380 000**

3. No share of the value fluctuation reserve (section 2 letter b/i and ii)

FR_{PL}= 102%	$FR_{\text{contract start date}}$ = 105%	
$VFR_{\text{entire share}}$	= CHF 10 000 000 (PF_{PL}) × 2%	= CHF 200 000
Compensation amount$_{\text{contract start date}}$	= CHF 6 000 000 ($PF_{\text{contract start date}}$) × 5%	= CHF 300 000
Contribution of the pension fund	**= CHF 200 000 ./. CHF 300 000 = negative amount →**	**no share in the VFR**

Annex 2
Determination of the Deficit for the Pension Fund

1 If the funding ratio according to Profond's annual financial statements (hereinafter referred to as the "funding ratio") is below 100% (cover shortfall) as of the effective date of the partial liquidation of Profond, this annex is used to determine the proportion of Profond's shortfall for the pension fund (hereinafter the "shortfall" or "SF"). The funding ratio according to the revised annual financial statements of Profond on 31.12. must be taken into account prior to the entry into force of the affiliation agreement for the pension fund (hereinafter referred to as the "funding ratio at the start of the contract").

2 The share of the shortfall relevant for the pension fund is calculated in CHF as follows:

a) as an entire share of the shortfall, if the funding ratio at the start of the contract was higher than or equal to 100%:
$SF_{\text{entire share}}$ = the (pension capital of actively contributing members and pensioners as of the effective date of the partial liquidation) × (100% - the funding ratio as of the reference date for the partial liquidation)

b) as a reduced portion of the shortfall, if the funding ratio at the start of the contract was lower than 100%:
$SF_{\text{reduced share}}$ = $SF_{\text{entire share}}$ - compensation amount at the contract start date

where the following applies:
(i) The compensation amount at the start of the contract = (pension capital of actively contributing members and pensioners at the contract start date) × (100% - funding ratio at the start of the contract)
(ii) If the reduced share of the shortfall ($SF_{\text{reduced share}}$) is less than zero, the no share of the shortfall is assigned to the pension fund. It also does not receive any positive contribution.

Examples

1.	**Entire share of the shortfall (section 2 letter a)**		
	Funding ratio $(FR)_{\text{as of the reference date of the partial liquidation (PL)}}$ = 96%	$FR_{\text{contract start date}}$ = 105%	
	Share of the pension fund	**= CHF 10 000 000 (pension capital $(PC)_{PL}$) × 4%**	**= CHF 400 000**
2.	**Reduced share of the shortfall (section 2 letter b/i)**		
	FR_{PL}= 96%	$FR_{\text{contract start date}}$ = 98%	
	$SF_{\text{entire share}}$	= CHF 10 000 000 (PC_{PL}) × 4%	= CHF 400 000
	Compensation $\text{amount}_{\text{contract start date}}$	= CHF 6 000 000 ($PC_{\text{contract start date}}$) × 2%	= CHF 120 000
	Share of the pension fund	**= CHF 400 000 ./. CHF 120,000**	**= CHF 280 000**
3.	**No share of the shortfall (paragraph 2 letter b/i and ii)**		
	FR_{PL}= 98%	$FR_{\text{contract start date}}$ = 96%	
	$SF_{\text{entire share}}$	= CHF 10 000 000 (PC_{PL}) × 2%	= CHF 200 000
	Compensation $\text{amount}_{\text{contract start date}}$	= CHF 6 000 000 ($PC_{\text{contract start date}}$) × 4%	= CHF 240 000
	Contribution of the pension fund	**= CHF 200 000 ./. CHF 240 000 = negative amount →**	**no share of shortfall**

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