

# COPRE

REGULATIONS FOR PARTIAL LIQUIDATION

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## PREAMBLE

### Art. 1 – General provisions

1. In conformity with articles 53b to 53d of the Federal Law on Occupational Old-Age, Survivors' and Disability Pension Plan (LOB9 of 25 June 1982, articles 27g and 27h of the Ordinance on Occupational Old-Age, Survivors' and Disability Pension Plans of 18 April 1984 (OBB2), article 23 of the Federal Law on Vested Benefits in Occupational, Old-age, Survivors' and Disability Pension Plans of 17 December 1993 (FLV) and in line with the Pension Regulations of COPRÉ (hereinafter the Foundation), the Board of Trustees enacts the present Regulations concerning Partial Liquidation.

The present regulations establish the conditions and modalities for the procedure concerning partial liquidation of the Foundation as well as the possible employer-specific partial liquidation in cases where 'Disposable funds of employers to be allocated' exist.

2. The terms referring to persons, as used in the present regulations, are applicable to both men and women.
3. The term 'employer' refers to any company affiliated to the Foundation through a membership contract.

## PARTIAL LIQUIDATION

### Art. 2 – Generalities

1. The pension capital of the active insured and pension beneficiaries, the technical provisions – subject to the ‘Employers’ disposable funds to be allocated’ – as well as the value fluctuation reserve and possible disposable funds of the Foundation are managed at Foundation level. The ‘Employers’ disposable funds to be allocated’ are managed separately per employer.
2. In principle, in the event of a partial liquidation of the Foundation, the technical provisions are calculated on the basis of the Regulations on Valuation of the Foundation’s Liabilities of an Actuarial Nature in force on the critical date for the partial liquidation. In the case of employer-specific partial liquidation, only the ‘Employers’ disposable funds to be allocated’ can be distributed.

### Art. 3 – Conditions for employer-specific partial liquidation

1. When the ‘Employers’ disposable funds to be allocated’ exist within a pension fund, the conditions for a partial liquidation of this pension fund are fulfilled when:
  - a) the number of staff insured in the employer’s affiliation agreement undergoes a significant reduction. The reduction is considered as significant when the number of insured is reduced by:
    - 2 persons at least for a total staff of 2 to 5 persons,
    - 4 persons at least for a total staff of 6 to 10 persons,
    - 6 persons at least for a total staff of 11 to 25 persons,
    - 8 persons at least for a total staff of 26 to 50 persons,
    - 10 persons at least for a total staff of 51 to 100 persons and
    - 10% at least for a total staff of over 100 persons.

- b) in the context of a restructuring of the employer concerned, the number of his staff adhering to the affiliation agreement undergoes a modification which affects:
  - 1 person at least for a total staff of 1 to 5 persons,
  - 2 persons at least for a total staff of 6 to 10 persons,
  - 3 persons at least for a total staff of 11 to 25 persons,
  - 4 persons at least for a total staff of 26 to 50 persons,
  - 5 persons at least for a total staff of 51 to 100 persons and
  - 5% at least for a total staff of 100 persons and more.

A restructuring implies a strategic reorganisation by the affiliated employer, characterised either by the establishment of new basic activities or by the discontinuation, sale or any other modification of one or several areas of activity. There can also be a restructuring when an affiliated employer discontinues certain internal services and outsources them. On the other hand a reconfiguration of management structures alone, without any staff changes, cannot be considered as a restructuring.

2. In the context of a significant reduction in staff or of a restructuring, the following are not taken into consideration:
  - a) voluntary exits, not related to the staff reduction or restructuring
  - b) fixed-term work contracts that have expired;
  - c) terminations for valid reasons within the meaning of article 337 of the Federal Law of 30 March 1911 complementing the Swiss Civil Code – Livre cinquième – Law of obligations (CO);
  - d) retirements, cases of disability and cases of death.
3. The reductions or modifications of the total number of staff mentioned in paragraph 1,

letters a) and b) are calculated in function of the total number of active persons insured with the employer before the start of the staff reduction or restructuring.

#### Art. 4 – Conditions for partial liquidation of the Foundation

1. The conditions for a partial liquidation of the Foundation are fulfilled when:

a) the total number of staff adhering to the affiliation agreement of an employer undergoes a significant reduction. The reduction is considered as significant when the number of insured staff is reduced by:

- 2 persons at least for a total staff of 2 to 5 persons,
- 4 persons at least for a total staff of 6 to 10 persons,
- 6 persons at least for a total staff of 11 to 25 persons,
- 8 persons at least for a total staff of 26 to 50 persons,
- 10 persons at least for a total staff of 51 to 100 persons and
- 10% at least for a total staff of over 100 persons.

b) in the context of the restructuring of an employer affiliated to the Foundation, the total number of staff adhering to the affiliation agreement of the employer concerned undergoes a modification that affects:

- 1 person at least for a total staff of 1 to 5 persons,
- 2 persons at least for a total staff of 6 to 10 persons,
- 3 persons at least for a total staff of 11 to 25 persons,
- 4 persons at least for a total staff of 26 to 50 persons,
- 5 persons at least for a total staff of 51 to 100 persons and
- 5% at least for a total staff of 100 persons and more.

c) an employer who has concluded an affiliation agreement for more than five years terminates his affiliation;

d) the significant reduction of staff, restructuring or the termination of an affiliation agreement also lead to a reduction of at least 10% in the pension capital of the active insured and pension beneficiaries.

A restructuring implies a strategic reorganisation by the affiliated employer, characterised either by the establishment of new basic activities or by the discontinuation, sale or any other modification of one or several areas of activity. There can also be a restructuring when an affiliated employer discontinues certain internal services and outsources them. On the other hand a reconfiguration of management structures alone, without any staff changes, cannot be considered as a restructuring.

2. In the context of a significant reduction in staff or of a restructuring, the following are not taken into consideration:

- a) voluntary exits, not related to the staff reduction or restructuring
- b) fixed-term work contracts that have expired;
- c) terminations for valid reasons within the meaning of article 337 of the Federal Law of 30 March 1911 complementing the Swiss Civil Code – Livre cinquième – law of obligations (CO);
- d) retirements, cases of disability and cases of death.

3. The reductions or modifications of the total number of staff mentioned in paragraph 1, letters a) and b) are calculated in function of the total number of active persons insured with the employer before the start of the staff reduction or restructuring. The variation in the pension capital of the active insured and pension beneficiaries is calculated in function of the pension capital of the active insured and pension beneficiaries of the

Foundation before the start of the staff reduction, restructuring or effective date of termination.

4. Any consequences of a significant increase in staff as a result of a restructuring or company take-over are settled separately in writing. In agreement with the expert in occupational pension plans, the Board of Trustees takes all the necessary measures to preserve the vested rights and the claims of the insured.
5. The full or partial taking-over of the insured staff of an employer affiliated to the Foundation by another employer who is also affiliated to the Foundation does not constitute a case of partial liquidation.
6. When one of the above conditions is fulfilled and the Foundation's coverage rate as per art. 44 OBB2 is between 97% and 106%, a partial liquidation procedure is waived.

## COMMON PROVISIONS

### Art. 5 – Critical dates

1. The Board of Trustees determines whether the conditions for a partial liquidation are fulfilled. If one of the conditions is met, it is obliged to implement the partial liquidation. The employer must provide the Board with all the information required to accomplish its task. The Board of Trustees sets the critical date or period for defining the group of persons concerned in function of the event and the exits of the insured.
2. In the event of significant reduction of staff or of restructuring, the critical date for determining the accomplishment of the conditions for partial liquidation is the closing date of the annual accounting period at the expiry of which the required reduction of the number of insured is determined, or during which the restructuring is carried out. For the significant reduction, the critical period begins with the first forced departure and ends with the last forced departure; for restructuring, it begins with the day the employer decides to restructure. In principle,

only the variation noted during a calendar year is taken into account; however, if the variations in staff were foreseen or planned to stretch over a longer period, it is this that is the critical period. However, the beginning of the period to be taken into account cannot be earlier than 3 years ago, or even 5 years in certain particular cases.

For a significant reduction and restructuring, the departure is considered as forced when the work contract is terminated by the employer; it is also presumed to be forced when the person insured, after having taken note of the reduction of the staff count or the restructuring, terminates his work contract himself. The critical date for calculating the coverage rate and asset situation (establishment of the partial liquidation balance sheet) is 31 December of the accounting period preceding the critical date for determining the fulfillment of the conditions for partial liquidation.

In the event of termination of an affiliation agreement, the date for calculating the coverage rate and asset situation (establishment of the partial liquidation balance sheet) is in principle set at 31 December of the year of the end of the affiliation agreement.

3. In the event of a modification of at least 5% of assets and liabilities between the date of the calculation of the coverage rate and asset situation and that of the transfer of funds, the provisions to be transferred, the value fluctuation reserve and the disposable funds or deficit are adapted in consequence.

### Art. 6 – Group of beneficiaries and transfer

1. In principle, the disposable funds are attributed individually. The transfer of individual rights takes place in line with articles 3 to 5 FLV.
2. The Board of Trustees may attribute a collective right to the disposable funds in the event of a collective exit. If need be, the

collective transfer of assets takes place through an agreement concluded with the new pension fund, either in the form of an asset transfer contract in line with the Federal Law of 3 October 2003 on Mergers, Scission, Transformation and Transfer of Assets (LFus), or in the form of a takeover contract within the meaning of the CO.

3. The group of beneficiaries includes active insured and pension beneficiaries who have left the Foundation during the critical period of partial liquidation due to a significant reduction of staff, a restructuring or the termination of an affiliation agreement. The Board of Trustees determines, on the basis of the provisions of the affiliation agreement or a subsequent agreement, whether the pension beneficiaries should be transferred to the new pension fund or remain with the Foundation, and on which conditions.

#### **Art. 7 – Collective right or individual right in the context of partial liquidation**

1. An individual exit gives rise to an individual right to a part of the disposable funds. In the case of a collective exit this right may be individual or collective.
2. In the case of a collective exit, in addition to the right of individual or collective participation in the disposable funds, there is a collective right of participation in the technical provisions and the value fluctuation reserve. The right to the technical provisions only exists if the actuarial risks are also transferred.
3. A collective exit occurs when several insured persons (active or possibly pension beneficiaries), namely at least 20 % of the insured persons concerned by the partial liquidation, but at least 3 persons for a staff count below 50, are transferred together as a group to a same pension fund. The other departures are considered as individual departures and do not give entitlement to the technical provisions and a part of the fluctuation reserve.

4. In determining the collective right, consideration is given to the extent to which the exiting group has contributed to the constitution of the technical provisions and the value fluctuation reserve. The right to the value fluctuation reserve is established in proportion to the pension capital transferred in relation to the total pension capital. This right may be reduced if the exiting group has contributed to a lesser degree to the constitution of the technical provisions and the value fluctuation reserve, or if by departing it has necessitated an increase in the level of provisions for the remaining group, in relative value. This increase may be necessary when the demographic ratio deteriorates or the pension beneficiaries are not transferred and remain in the Foundation. The need for this increase must be validated by the expert in occupational pension plans.
5. The collective right to the technical provisions and value fluctuation reserve ceases when the exiting group is at the origin of the Foundation's partial liquidation.

#### **Art. 8 – Bases**

1. The calculation of the disposable funds or technical deficit as well as, if appropriate, the collective right to the technical provisions and the value fluctuation reserve is made on the basis of:
  - the annual accounts of the Foundation established on the 31 December preceding the partial liquidation, in conformity with the Swiss GAAP RPC 26 accounting recommendations,
  - the technical appraisal established on the 31 December preceding the partial liquidation and indicating the coverage rate determined in accordance with article 44 OBB2 and
  - the partial liquidation report by the Foundation's expert in occupational pension plans.
2. There can be no right to the disposable funds as long as the technical provisions and

value fluctuation reserve, as defined by the Board of Trustees, have not been fully constituted.

3. Expenses relating to the partial liquidation are taken into account before distributing the disposable funds or the deficit.

#### **Art. 9 – Plan for distributing the disposable funds**

1. In respect of the principles of equal treatment, good faith, sustainability and proportionality, the determination of the individual shares of the disposable funds takes place in stages. The number of active insured persons and pension beneficiaries is split into a continuity number (remaining insured persons) and a departure number (exiting insured persons). The disposable funds are then split in proportion to the coverage capital of the active insured and the mathematical reserves of the remaining pension beneficiaries and exiting insured persons; the individual distribution of the disposable funds to the exiting insured persons takes place according to the distribution plan established by the Board of Trustees on the basis, in particular, of the amount of individual pension capital; for the remaining insured persons, the disposable funds are kept without being distributed; they remain at the disposal of the Board of Trustees.
2. For the determination of the collective shares in the disposable funds or in the provisions and the value fluctuation reserve, all the technical provisions and the value fluctuation reserve are dissolved. The number of active insured persons and pension beneficiaries is then split into a continuity number (remaining insured persons) and a departure number (exiting insured persons collectively). The necessary technical provisions are determined and attributed separately to the remaining and exiting insured persons in accordance with the methods specified by the Regulations on Liabilities of an Actuarial Nature, and the amount of the part of the value fluctuation

reserve to be transferred is calculated pro rata to the pension capital of the exiting insured persons.

3. Buy-back contributions, entry benefits, advance payments and reimbursements for home ownership as well as inflows and withdrawals following a divorce paid 12 months before the partial liquidation date are not taken into account.
4. When the partial liquidation leads to the exit of pension beneficiaries, the possible strengthening of the mathematical reserves necessary for the transfer to the future pension fund to be possible shall be deducted from their right to the disposable funds.

#### **Art. 10 – Allocation of the technical deficit**

1. In the event of a technical deficit, the individual exit benefits – and in the case of exit of pension beneficiaries, the individual mathematical reserves of these pensioners – are reduced in proportion to the technical deficit calculated in accordance with article 44 OBB 2. Paragraph 6 below is reserved.
2. The minimum retirement capital as per article 15 LOB as well as current pensions, in the event of exit of pension beneficiaries, are guaranteed in all cases.
3. In the event of a deficit, the possible collective right to proportional participation in the technical provisions, including any 'Disposable funds to be allocated', is used primarily to compensate – if appropriate – for the reduction in vested benefits applied for the exiting number. For the number remaining, the share in the deficit remains accounted for in the Foundation without any individual attribution.
4. In the event of the probable or manifest existence of a technical deficit noted in any minutes, the Board of Trustees is authorised to apply a provisional reduction of individual vested benefits in anticipation when it appears likely that one of the conditions for partial liquidation will be fulfilled very soon. The provisional reduction only applies to



- insured persons likely to be concerned by the partial liquidation. After closing the partial liquidation procedure, the Board of Trustees establishes a final statement and pays out any difference, with remuneration interest (15 LOB) and interest on arrears (7 OV) in addition.
5. If the exit benefit has already been transferred without diminution, the insured person is obliged to return the surplus amount received.
  6. The Board of Trustees may, on the basis of the partial liquidation report from the expert in occupational pension plans, waive a reduction when it presents a coverage rate of at least 95% and if this rate is not reduced significantly by the payment of the non-reduced vested benefits.
  7. The Board of Trustees notes the existence of one of these conditions and implements the partial liquidation procedure. It draws up the partial liquidation balance sheet and distribution plan and submits these to the Supervisory Authority.
  8. The Board of Trustees informs the insured and pension beneficiaries of the partial liquidation in full and in good time. This information is transmitted by the means that the Board of Trustees deems appropriate.
  9. The Board of Trustees informs the insured and pension beneficiaries that they have the possibility of consulting the partial liquidation balance sheet and the distribution plan at the Foundation's head office within 30 days of the date of the Board's communication.
  10. Within the time frame granted for consultation, the insured and pension beneficiaries may communicate to the Board of Trustees in writing their remarks and observations on the distribution plan. In the event of objections, the Board of Trustees shall respond in writing to the objectors. If the objection is accepted, the distribution plan or respectively the procedure are adapted accordingly. If there are no objections or if these have been settled by the Board of Trustees at the end of the time frame, the partial liquidation is implemented.
  11. Insured persons and pension beneficiaries also have the right, within 30 days, of having the conditions, procedure and distribution plan verified by the Supervisory Authority and asking it to make a ruling
  12. The decision of the Supervisory Authority can be the object of an appeal before the Federal Administrative Court, in accordance with article 74 LOB, within 30 days of its notification. An appeal against the decision of the Supervisory Authority only has a suspensive effect if the President of the competent court of the Federal Administrative Court or the investigating judge so decides, or upon request of the appellant. If the suspensive effect is not granted, the decision of the Federal Administrative Court only has effect to the advantage or detriment of the appellant.
  13. The absence of objection or appeal constitutes acceptance by the affiliates of the distribution plan and its implementation, of which they are informed.

#### **Art. 11 – Obligation of the employer**

1. The employer shall immediately notify any reduction in staffing or any restructuring likely to lead to a partial liquidation. He is obliged to provide the Board of Trustees with all the information required.
2. The Board of Trustees treats the information provided in the strictest confidentiality.

#### **Art. 12 – Implementation provisions**

1. The Board of Trustees implements the distribution plan. In the event of an objection or appeal for which the suspensive effect has not been requested or has been refused, a partial implementation in advance is possible.
2. The individual transfer of the disposable funds is made in principle for:

- a) active insured persons, in addition to their exit benefits; the provisions of articles 3 to 5 FLV are applicable;
  - b) pension beneficiaries, in the form either of a payment in cash or an increase in pension in function of the decision of the Board of Trustees.
3. The Board of Trustees determines the mode of transfer of assets, which can take place as a universal transfer according to the rules of the Law on Mergers, or individually according to the rules of the CO.
  4. In the case of a collective transfer of the rights to the disposable funds as well as the technical provisions and value fluctuation reserve to one or several other pension institutions, a transfer or takeover agreement must be concluded between the two pension institutions.
  5. In all cases the auditing body shall verify and confirm the implementation of the partial liquidation in due form.

### Art. 13 – Final provisions

1. The provisions of the present regulations were adopted by the Board of Trustees on 25 May 2020 and formally approved by decision of the Supervisory Authority of the Canton of Geneva on 12 March 2021. They come into force on 1 July 2020.
2. They annul and replace the regulations that came into force on 1 January 2018.
3. They can be modified at any time by decision of the Board of Trustees, approved by the Supervisory Authority.
4. They are brought to the attention of all insured persons.
5. If the regulations are translated, in part or in full, into other languages, the French version shall prevail with respect to their interpretation and application.

On behalf of the Board of Trustees



Claude Roch  
Chairman



Robert Fiechter  
Vice-Chairman