

Partial liquidation regulations Swisscanto Flex Collective Foundation of cantonal banks

1st September 2023



Swisscanto
Flex Collective
Foundation

Contents

A	Purpose and content	4
Art. 1	General provisions	4
B	Circumstances of a partial liquidation of the Foundation	5
Art. 2	Conditions for a partial liquidation	5
Art. 3	Significant reduction	5
Art. 4	Restructuring of the workforce	5
Art. 5	Termination of an affiliation agreement	5
C	Circumstances of a partial or total liquidation of the “Flex collective” component	6
Art. 6	Conditions for a partial liquidation	6
Art. 7	Significant reduction	6
Art. 8	Restructuring of the workforce	6
Art. 9	Termination of an affiliation agreement	6
Art. 10	Conditions for a total liquidation	6
D	Circumstances of a partial or total liquidation of a pension fund in the “Flex collective” or “Flex individual” component	7
Art. 11	Conditions for a partial liquidation	7
Art. 12	Significant reduction	7
Art. 13	Restructuring of the workforce	8
Art. 14	Termination of an affiliation agreement	8
Art. 15	Conditions for a total liquidation	8
E	Procedure for a partial or total liquidation	9
Art. 16	General	9
Art. 17	Employer’s reporting obligation	9
Art. 18	Responsibilities	9
Art. 19	Reporting date	9
Art. 20	Constituents	10
Art. 21	Basis for determining the non-committed funds, the fluctuation reserves, the actuarial reserves and the shortfall	10
Art. 22	Collective departures	10
Art. 23	Collective entitlement to actuarial reserves and fluctuation reserves	10
Art. 24	Transfer of shares in the actuarial reserves and fluctuation reserves	11
Art. 25	Distribution plan for non-committed funds or a shortfall	11
Art. 26	Transfer of non-committed funds	11
Art. 27	Offsetting of shortfall	12

F	Disclosure and enforcement	13
Art. 28	Disclosure to active insured persons and pension recipients	13
Art. 29	Execution	14
Art. 30	Insolvency of the employer	14
Art. 31	Sharing of costs	14
G	Final provisions	15
Art. 32	Transitional provisions	15
Art. 33	Approval and entry into force	15

A Purpose and content

Art. 1 General provisions

Based on Art. 53b to d of the Swiss Federal Act on Occupational Old Age, Survivors' and Invalidity Pension Provision (OPA), Art. 27g to h of the Ordinance on Occupational Old Age, Survivors' and Invalidity Pension Provision (OPO 2) and Art. 23 of the Swiss Federal Act on the Vesting of Occupational Old Age, Survivors' and Invalidity Benefits (VBA) and the Pension Fund Regulations of Swisscanto Flex (hereinafter the "Foundation"), the Foundation Board has issued the following regulations.

These regulations govern the conditions and the procedure in the following situations:

- Partial liquidation of the Foundation
- Partial or total liquidation of the "Flex collective" component
- Partial or total liquidation of a pension fund in the "Flex collective" component
- Partial or total liquidation of a pension fund in the "Flex individual" component

The departure of an insured person is deemed involuntary if their employment is terminated by the employer for economic reasons. However, a departure is also deemed involuntary if the insured person resigns within six months of becoming aware of the staff reduction or restructuring.

An affiliated employer is deemed to be restructured if organisational measures are taken that result in the discontinuation of the employer's previous main activities, the outsourcing of parts of the business or the acquisition of other employers or parts of the business, and these measures result in the departure of active insured persons.

To determine a reduction in the portfolio, the number and pension capital of the active insured persons at the start and end of the financial year are compared against each other.

If a restructuring is decided by the competent bodies of the affiliated employer, the reduction begins with the first and ends with the last involuntary resignation within a timeframe of 12 months after the relevant decision. If a longer or shorter timeframe is set by the competent bodies of the affiliated employer, this will be binding.

If an affiliation agreement is terminated, all active insured persons of the employer will leave the Foundation. The associated insured persons and pension recipients who are unable to work will leave the Foundation, provided that the employer is not liquidated and this is provided for in the affiliation agreement.

Any situations not expressly regulated by these provisions will be dealt with by the Foundation analogously in accordance with legal requirements.

B

Circumstances of a partial liquidation of the Foundation

Art. 2 Conditions for a partial liquidation

The conditions for a partial liquidation of the Foundation are met if

- a. the number of insured persons of an affiliated employer undergoes a substantial reduction that significantly reduces the number and the pension capital of the Foundation's active insured persons; or
- b. an affiliated employer is restructured, resulting in a significant reduction in the number and the pension capital of the Foundation's active insured persons; or
- c. the affiliation agreement between an affiliated employer and the Foundation is terminated, resulting in a significant reduction in the number and pension capital of the Foundation's active insured persons and pensioners.

Art. 3 Significant reduction

A reduction in the Foundation's portfolio is deemed to be significant if the number of active insured persons in the Foundation is reduced by at least 1% and the total pension capital of the active insured persons in the Foundation is reduced by at least 1%.

Art. 4 Restructuring of the workforce

The restructuring of an employer is deemed to be significant if the number of active insured persons in the Foundation is reduced by at least 0.5% and the total pension capital of the active insured persons in the Foundation is reduced by at least 0.5%.

Art. 5 Termination of an affiliation agreement

If an affiliation agreement is terminated, the conditions for partial liquidation are met if this reduces the number of active insured persons and pensioners in the Foundation by at least 0.5% and the total pension capital of the active insured persons and pensioners in the Foundation by at least 0.5%.

C

Circumstances of a partial or total liquidation of the “Flex collective” component

Art. 6 Conditions for a partial liquidation

The conditions for the partial liquidation of the “Flex collective” component are met if

- a. the number of insured persons of an affiliated employer in the “Flex collective” component undergoes a substantial reduction that significantly reduces the number and the pension capital of the Foundation’s active insured persons in the “Flex collective” component; or
- b. an affiliated employer is restructured, resulting in a significant reduction in the number and the pension capital of the Foundation’s active insured persons in the “Flex collective” component; or
- c. the affiliation agreement between an affiliated employer in the “Flex collective” component and the Foundation is terminated, resulting in a significant reduction in the number and pension capital of the Foundation’s active insured persons in the “Flex collective” component.

If a pension fund in the in the “Flex collective” component triggers a partial liquidation at Foundation level, the conditions for partial liquidation in the “Flex collective” component are also deemed to be met.

Art. 7 Significant reduction

A reduction in the Foundation’s portfolio in the “Flex collective” component is deemed to be significant if the number of active insured persons in the “Flex collective” component is reduced by at least 4% and the total pension capital of the active insured persons in the “Flex collective” component is reduced by at least 4%.

Art. 8 Restructuring of the workforce

The restructuring of an employer is deemed to be significant if the number of active insured persons in the “Flex collective” component is reduced by at least 2% and the total pension capital of the active insured persons is reduced by at least 2%.

Art. 9 Termination of an affiliation agreement

If an affiliation agreement is terminated, the conditions for partial liquidation are met if the number of active insured persons in the “Flex collective” component is reduced by at least 2% and the total pension capital of the active insured persons in the “Flex collective” component is reduced by at least 2%.

Art. 10 Conditions for a total liquidation

The conditions for a total liquidation of the “Flex collective” component are met if all affiliation agreements in the “Flex collective” component are terminated on the same effective date.

D

Circumstances of a partial or total liquidation of a pension fund in the "Flex collective" or "Flex individual" component

Art. 11 Conditions for a partial liquidation

The conditions for the partial liquidation of a pension fund in the "Flex collective" or "Flex individual" component are met if

- a. the portfolio of an affiliated employer undergoes a substantial reduction that significantly reduces the number and the pension capital of the pension fund's active insured persons; or
- b. an affiliated employer is restructured, resulting in a significant reduction in the number and the pension capital of the pension fund's active insured persons; or
- c. one, but not all, of the affiliation agreements of the affiliated employers in the pension fund are terminated, resulting in a significant reduction in the number and the pension capital of the active insured persons in the pension fund.

If the conditions for a partial liquidation of the Foundation are met, the conditions for partial liquidation of the pension fund triggering the partial liquidation are also deemed to be met. The right to the total liquidation of this pension fund remains reserved.

The implementation of a partial liquidation of the pension fund is waived when:

- a. in the case of individual departures, the following conditions are cumulatively met:
 - The pension fund has no non-committed funds;
 - The pension fund is not underfunded.
- b. in the case of a collective departure, the following conditions are cumulatively met:
 - The pension fund has no non-committed funds; and
 - The pension fund has no fluctuation reserves; and
 - The pension fund has no actuarial reserves; and
 - The pension fund is not underfunded.

Art. 12 Significant reduction

A reduction in the workforce in a pension fund is deemed to be significant if at least the following reductions in insured persons and pension capital occur:

- where there are fewer than 10 insured persons:
 - the involuntary departure of at least three active insured persons and at least 30% of the pension capital of the active insured persons
- where there are 11 to 30 insured persons:
 - the involuntary departure of at least four active insured persons and at least 25% of the pension capital of the active insured persons
- where there are 31 to 50 insured persons:
 - the involuntary departure of at least five active insured persons and at least 20% of the pension capital of the active insured persons
- where there are over 50 insured persons:
 - the involuntary departure of at least 10% of the active insured persons and at least 10% of the pension capital of the active insured persons

Art. 13 Restructuring of the workforce

The restructuring of an employer is deemed to be significant if the number of active insured persons in the pension fund is reduced by at least 5% and the total pension capital of the active insured persons in the pension fund is reduced by at least 5%.

Art. 14 Termination of an affiliation agreement

If one or more affiliation agreements within a pension fund are terminated, the conditions for partial liquidation are met if the number of active insured persons in the pension fund is reduced by at least 5%, but less than 100%, and the pension capital of the insured persons in the pension fund is reduced by at least 5%, but less than 100%.

Art. 15 Conditions for a total liquidation

The conditions for the total liquidation of a pension fund are met if all affiliation agreements within the pension fund are terminated (i.e. all active insured persons leave the pension fund).

The total liquidation procedure is waived if the pension fund changes pension provider completely.

E Procedure for a partial or total liquidation

Art. 16 General

Unless explicitly stated, the following provisions apply in the event of a partial liquidation at Foundation level, at "Flex collective" level and at pension fund level. The procedure is carried out at each affected level with the relevant applicable values.

If a partial liquidation occurs at one level (Foundation, "Flex collective" component or pension fund) in a financial year due to the conditions for a reduction in the portfolio and the termination of the affiliation agreements being met, a "joint" partial liquidation is carried out at this level.

The pension capital of the active insured persons is determined on the effective date of the partial liquidation or on the date of departure prior to the effective date of the partial liquidation.

Art. 17 Employer's reporting obligation

The employer must inform the Foundation immediately and truthfully of any reduction in the workforce or restructuring that could lead to a partial or total liquidation of the pension fund. In particular, the context of the reduction, the period the measure is taken in, the employees affected, the end of their employment contracts and the reason for the termination must be listed.

Art. 18 Responsibilities

The Foundation's management is responsible for determining and implementing a partial liquidation. It must examine whether the conditions for a partial or total liquidation in accordance with these regulations are met and determine the details (in particular the effective date of the partial liquidation, individual or collective departure and distribution plan). It must ensure that the insured persons concerned and the pension fund committee of the pension fund in question are informed of the partial or total liquidation.

The Foundation Board is responsible for monitoring the correct implementation by management.

The auditors check the proper implementation of these regulations in their regular annual reporting and record the findings in writing in their annual report to the Foundation Board.

The employer and the pension fund committee must provide the Foundation with all information required to fulfil their duties.

Art. 19 Reporting date

The effective date of a partial or total liquidation is 31 December, which is closest to the completion of the reduction in the workforce, the completion of the restructuring or the termination of the affiliation agreement.

This effective date is decisive for determining the size of the actuarial reserves, the fluctuation reserves and the non-committed funds or the shortfall.

Art. 20 Constituents

If the conditions for a partial liquidation of the Foundation or the conditions for the partial or total liquidation of the "Flex collective" component or a pension fund are met, the funds to be distributed or the total shortfall constitute the following:

- a. A collective entitlement to actuarial reserves and fluctuation reserves in the event of a collective departure;
- b. A collective or individual entitlement to non-committed funds;
- c. An individually allocated shortfall.

Art. 21 Basis for determining the non-committed funds, the fluctuation reserves, the actuarial reserves and the shortfall

The following principles are used to determine the non-committed funds, the fluctuation reserves, the actuarial reserves and the shortfall:

- a. The Foundation's audited annual financial statements prepared in accordance with Swiss GAAP FER 26;
- b. The annual financial statements of the "Flex collective" component;
- c. The annual financial statements of the pension funds in the "Flex individual" component; and
- d. The actuarial reserves, fluctuation reserves and non-committed funds recognised in the actuarial balance sheet.

Any outstanding liabilities in accordance with the provisions of the affiliation agreement are recognised at employer level.

Any obligation on the part of the employer to make additional contributions in accordance with the affiliation agreement and/or the regulatory provisions of the Foundation remains reserved.

In the event of significant changes of at least 10% of the assets or liabilities between the effective date of the partial liquidation and the transfer of funds, the non-committed funds, the actuarial reserves, the reserves for fluctuations and the shortfall must be adjusted accordingly.

If an employer contribution reserve exists on the effective date and can no longer be used for its intended purpose, it must be dissolved and recognised as non-committed funds in the distribution plan. Para. 3 applies notwithstanding.

Art. 22 Collective departures

A collective departure is deemed to have taken place if at least five active insured persons of an affiliated employer transfer together as a group to the same pension scheme of the same new employer at the same time.

In all other cases, an individual departure is deemed to have occurred.

Art. 23 Collective entitlement to actuarial reserves and fluctuation reserves

Where a collective departure as part of a partial liquidation occurs, a collective pro rata entitlement to the actuarial reserves and to the fluctuation reserve exists, in so far as the departing collective has contributed to their formation.

Actuarial reserves are only recognised if corresponding risks are transferred.

The entitlement to the actuarial reserves is determined for each reserve depending on the calculation method:

- a. If the actuarial reserve is calculated individually (example: retirement losses), the share of the actuarial reserve must correspond to the sum of the individually calculated actuarial reserves.
- b. If the actuarial reserve is calculated as a percentage of a reference value (example: reserve for longevity), the share of the actuarial reserve is calculated in proportion to this reference value.
- c. If the actuarial reserve is calculated on the basis of the portfolio taken into account (example: reserve for risk fluctuations), the actuarial reserve is calculated for the portfolio before and after partial liquidation. The share of the departing persons corresponds to the positive difference between the actuarial reserve before partial liquidation and the actuarial reserve after partial liquidation.

The collective share of the actuarial reserve is reduced to the extent that the departing insured persons have not contributed to the actuarial reserves. In such cases, a pro rata entitlement to 20% of the actuarial reserves will arise from the 6th year of the affiliation and for each additional full year until the reduction ceases.

The entitlement to fluctuation reserves corresponds pro rata to the entitlement to the pension capital of the insured persons (active insured persons unable to work and pension recipients).

The collective share of the fluctuation reserves is reduced to the extent that the departing insured persons have not contributed to the fluctuation reserves. In such cases, a pro rata entitlement to 20% of the fluctuation reserves will arise from the 6th year of the affiliation and for each additional full year until the reduction ceases.

The collective entitlement to reserves and fluctuation reserves does not exist if the partial liquidation was triggered by the collectively departing group.

Art. 24 Transfer of shares in the actuarial reserves and fluctuation reserves

The shares of the actuarial reserves and fluctuation reserves to which the departing insured persons are entitled are usually transferred collectively. Art. 27 para. 3 applies notwithstanding.

The shares of the actuarial reserves and fluctuation reserves attributable to the remaining insured persons remain with the insured persons of the pension fund and are not individually allocated.

Art. 25 Distribution plan for non-committed funds or a shortfall

The available non-committed funds are only divided between the departing insured persons and those remaining in the pension fund if they exceed CHF 100 per insured person.

The management determines the shares of the insured persons (active insured persons, insured persons unable to work and pension recipients) in the non-committed funds or in any shortfall in proportion to the pension capital of active insured persons and pensioners on the effective date of the partial liquidation or on the previous date of departure. The size of the existing pension capital of the insured persons is decisive for determining the share. Vested benefits, lumpsum deposits, purchases, repayments of early withdrawals under the promotion of home ownership schemes, deposits due to divorce and additional credits made up to three years before the effective date are deducted and early withdrawals under the promotion of home ownership schemes and payments due to divorce made up to three years before the effective date are added.

Art. 26 Transfer of non-committed funds

The non-committed funds to which the departing insured persons are entitled are usually transferred individually. If the insured persons transfer as a group to another pension fund (collective departure pursuant to Art. 22), the transfer is made collectively.

The shares of the non-committed funds attributable to the remaining insured persons remain with the insured persons of the pension fund and are not individually allocated.

Art. 27 Offsetting of shortfall

The shares of the shortfall attributable to the departing insured persons are deducted individually from their pension capital. The retirement savings pursuant to Art. 15 OPA are guaranteed in any event.

The share of the shortfall attributable to the remaining insured persons remains in the Foundation and is not individually allocated.

If actuarial reserves are transferred on a pro rata basis, they must be reduced in accordance with the relevant funding ratio and credited individually to the termination benefit until the reduction is offset.

Where, in the event of a shortfall, the unreduced or insufficiently reduced vested benefit was transferred, the insured person must repay the excess amount transferred.

F Disclosure and enforcement

Art. 28 Disclosure to active insured persons and pension recipients

If the conditions for a partial liquidation of the Foundation or the partial or total liquidation of the “Flex collective” component or a pension fund are met, the management will inform all affected persons (active insured persons and insured persons unable to work, pension recipients, persons who have already left) via the pension fund committees about the specifics of the issue, the reference date, the size of the reserve for fluctuations, the size of the actuarial reserves, the size of the non-committed funds or the shortfall, the group of affected insured persons, the distribution plan, the individual share of the non-committed funds or the individual shortfall and the legal remedies.

In the event of a partial liquidation of the Foundation, an additional notice is published in the Swiss Official Gazette of Commerce. The official publication must contain at least the following information:

- a. the conditions (e.g. a significant reduction in the workforce)
- b. the date of the partial liquidation
- c. the timeframe for determining the insured persons affected by the partial liquidation
- d. the notice that persons who were insured with an affiliated pension fund during the relevant period can consult the distribution plan and any other relevant documents at the Foundation.

If funds are transferred to the departing insured persons as part of a partial liquidation of the Foundation, all pension fund committees in the “Flex individual” component and the pension fund committees in the “Flex collective” component must be informed in an appropriate manner, with reference being made to the insured persons’ right to object and review in accordance with para. 4 to 6.

The persons concerned have the right to consult the files at the Foundation within 30 days of being informed and to lodge an objection to the decision of the Foundation Board regarding the conditions, the procedure and the distribution plan, while ensuring their privacy is protected. This objection must be made in writing and include supporting reasons.

If the existing differences cannot be resolved by mutual agreement, the Foundation must set a deadline of 30 days for the persons concerned to have the conditions, the procedure and the distribution plan reviewed and decided upon by the supervisory authority.

An appeal against the supervisory authority’s decision can be lodged with the Federal Administrative Court. An appeal against the supervisory authority’s decision has a suspensory effect only if the President of the Federal Administrative Court issues a statement to that effect, whether ex officio or at the request of the appellant. If no suspensory effect is granted, the decision by the Federal Administrative Court only works in favour of or against the appellant. Otherwise, Art. 74 OPA applies.

Art. 29 Execution

The distribution plan is legally binding and can be implemented if

- a. no objections were raised within the set deadlines; or
- b. all objections have been resolved by mutual agreement or none of the persons concerned has contacted the supervisory authority within the 30-day deadline set; or
- c. the conditions, the procedure and the distribution plan have been legally determined by the supervisory authority (certificate of legal effect).

The Foundation Board must inform the supervisory authority after the expiry of the objection period of any objections received and, if applicable, of their resolution.

If no objections are received or if these can be resolved by mutual agreement, the management may implement the distribution plan on condition that written confirmation is received from the supervisory authority that it has not received any appeals within the deadline.

Art. 30 Insolvency of the employer

If the employer has not paid all contributions owed by the time of the partial or total liquidation and bankruptcy or similar proceedings have been initiated against it, the outstanding contribution claim is provisionally written down to zero by means of an appropriate loss allowance. If the amount written off can be recovered subsequently in full or in part by a payment from the employer or the Security Fund, the entitlements of the insured persons concerned will be recalculated, taking into account the higher available assets, and additional benefits will be paid, taking into account the funds already transferred.

If the affiliation agreement is terminated due to the employer's insolvency, the pension recipients will remain with the Foundation. The Foundation may request that the employer fund the pension benefits as of the date of termination of the affiliation agreement. As a basis for calculating the amount claimed, the demographic fundamentals and the technical interest rate of the Foundation are used, less 25 basis points to cover the mortality risk.

Art. 31 Sharing of costs

The pension fund or funds will be charged for costs incurred in connection with a partial or total liquidation and for expertise in connection with the resolution of objections and appeals.

G Final provisions

Art. 32 Transitional provisions

If a reduction in the workforce or a restructuring begins when the partial liquidation regulations, valid from 28 October 2016, apply and the associated departures of insured persons end after these regulations come into force, or if an affiliation agreement is terminated on 31 December 2023, these regulations will apply.

Art. 33 Approval and entry into force

The partial liquidation regulations may be amended or terminated at any time by resolution of the Foundation Board. The Foundation Board will present these regulations and any changes to the relevant supervisory authority for approval.

These regulations come into force on 1 September 2023, subject to the supervisory authority's approval.

Glattbrugg, 24 August 2023

The Foundation Board