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Regulations on the partial liquidation of the foundation or pension providers

Tellco pkPRO

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1 Purpose

These regulations govern the conditions and procedure for the partial liquidation of Tellco pkPRO (hereinafter referred to as the «Foundation») as well as the partial or total liquidation of affiliated pension funds.

2 Conditions for the partial liquidation of the Foundation

The conditions for the partial liquidation of the Foundation have been met if both of the following conditions are fulfilled cumulatively:
a) Cancellation or partial cancellation of an affiliation contract
b) The relevant funding ratio is more than 102.5% or less than 97.5% at the end of a quarter

3 Procedure for the partial liquidation of the Foundation

3.1 Execution of a partial liquidation

The Foundation must carry out the liquidation.

3.2 Date of partial liquidation

The partial liquidation is carried out on the balance sheet date matching the cancellation date of the contract, at the end of the quarter for contracts cancelled with effect from the end of a quarter during the course of the year, and at the end of the following quarter for contracts cancelled on another date during the course of a year.

3.3 Calculation of the relevant funding ratio

The calculation of the funding ratio that applies on the balance sheet date is based on the annual commercial balance sheet as per 31 December prepared in accordance with the principles of Swiss GAAP FER 26 and the actuarial balance sheet of the same date. For cancellations at the end of a quarter during a calendar year, the relevant funding ratio is estimated on the basis of the performance, the applicable interest rate and other relevant data. The relevant funding ratio does not take account of the pension funds' disposable assets and fluctuation reserves.

3.4 Transfer of the fluctuation reserve and disposable assets of the Foundation

Pension funds leaving the Foundation are entitled to a share of the Foundation's fluctuation reserve and disposable assets. The claim to the fluctuation reserve equals the pro rata claim to the savings reserve.

These funds are transferred collectively to the pension funds leaving the Foundation. The insured belonging to these pension funds do not have any claim to the individual allocation of the disposable assets.

The contribution made to the fluctuation reserve and disposable assets by all the insured leaving the Foundation is taken into account.

The shares of the fluctuation reserve and disposable assets of the remaining pension funds are retained by the Foundation without being allocated to the individual pension funds.

3.5 Allocating a deficit (actuarial deficiency)

If the Foundation's relevant funding ratio (pursuant to par. 3.3) is less than 97.5%, the pension capital of the withdrawing pension funds is reduced by the amount of the actuarial deficiency:

Pension capital of the pension fund multiplied by the funding ratio.

Benefits brought into the pension fund and purchases of additional benefits made in the last twelve months before the withdrawal are not included in the calculation of the pension fund's share of the actuarial deficiency.

Advance withdrawals under the promotion of home ownership scheme and payouts in the wake of a divorce in the last twelve months are included in the calculation of the pension fund's share of the actuarial deficiency.

The pension funds' shares in the actuarial deficiency are deducted from the termination benefits. This may not, however, reduce the retirement assets pursuant to Art. 15 of the Federal Law on Occupational Retirement, Survivors' and Disability Pension Plans (BVG).

The pension funds' fluctuation reserves and disposable assets are at the disposal of the pension funds and must be used to reduce or eliminate the pension fund's actuarial deficiency.

The pro rata shares in the actuarial deficiency of the other pension funds still affiliated with the Foundation are retained by the Foundation without allocating the deficiency to the individual funds.

3.6 Entitlement to provisions

If actuarial risks are also transferred, there is a collective pro rata claim to the provisions in addition to the claim to the free assets and fluctuation reserves, provided that these have been accrued for the withdrawing group of insured.

4 Procedure and notification requirements for the partial liquidation of the Foundation

4.1 Resolution to partially liquidate the Foundation

The Board of Trustees establishes the partial liquidation and the relevant funding ratio.

4.2 Notification of pension funds

The Foundation informs the affected pension funds in writing of the decision to carry out a partial liquidation and informs them in particular of the facts, the relevant funding ratio, the amount of the disposable assets or the actuarial deficiency, and the next steps in the partial liquidation procedure.

4.3 Legal remedies available to the pension funds

The pension funds have the right to inspect the Foundation's records and, if desired, appeal against the form in which the partial liquidation will be carried out within 30 days of receiving the above information from the Foundation. If their differences cannot be settled amicably, the Foundation sets the pension funds a deadline of 30 days to submit a request for a review to the competent supervisory authority. The conditions and procedure of the partial liquidation and the calculation of the disposable assets or actuarial deficiency are then reviewed and a final decision is taken.

4.4 Legal force and execution

The partial liquidation becomes legally binding and can be executed if:
a) the pension funds affected by the partial liquidation do not file any objections; or
b) all objections could be settled amicably; or
c) the supervisory authority has issued a legally binding final decision.

5 Conditions for a partial or total liquidation of a pension fund

5.1 Principle

In the case of a partial or total liquidation of a pension fund, the pension capital of the withdrawing insured is increased by an individual or collective share of the disposable assets. If there is an actuarial deficiency, the retirement assets of the withdrawing insured are reduced individually.

5.2 Requirements for partial liquidation

The requirements for the partial liquidation of the pension fund are met if:

a) there is a significant reduction in the workforce of the affiliated employer due to job cuts made for financial reasons resulting in the involuntary departure of a significant proportion of the persons actively insured for the purposes of retirement provision or the loss of a considerable proportion of the pension provider's retirement savings;

b) the company of the affiliated employer is restructured and these measures result in the involuntary departure of a significant proportion of the persons actively insured for the purposes of retirement provision or the loss of a considerable proportion of the pension provider's retirement savings.

The restructuring of a company refers to measures taken by the employer that are not primarily aimed at cutting jobs and implementing staff redundancies. Rather, restructuring involves organisational measures resulting in the discontinuation of tasks performed by the company itself to date or the transfer of entire parts of the business to another company.

The loss of retirement savings within the meaning of a) above is deemed to be considerable if – depending on the number of persons actively insured for the purposes of retirement provision prior to the start of the job cuts – it is on the scale set out below:
- up to 5 insured persons: at least 2 involuntary departures and 30% of the retirement savings;
- 6 to 10 insured persons: at least 3 involuntary departures and 25% of the retirement savings;
- 11 to 25 insured persons: at least 4 involuntary departures and 20% of the retirement savings;
- 26 to 50 insured persons: at least 5 involuntary departures and 15% of the retirement savings;
- more than 50 insured persons: involuntary departures of at least 10% of persons actively insured for the purposes of retirement provision and 10% of the retirement savings.

The loss of retirement savings within the meaning of b) above is deemed to be considerable if – depending on the number of persons actively insured for the purposes of retirement provision prior to the restructuring – it is on the scale set out below:
- up to 5 insured persons: at least 1 involuntary departure and 25% of the retirement savings;
- 6 to 10 insured persons: at least 2 involuntary departures and 20% of the retirement savings;
- 11 to 25 insured persons: at least 3 involuntary departures and 15% of the retirement savings;
- 26 to 50 insured persons: at least 4 involuntary departures and 10% of the retirement savings;
- more than 50 insured persons: at least 5 involuntary departures and at least 5% of the retirement savings.

The beginning of the workforce reduction or restructuring is deemed to be the date on which the first insured involuntarily leaves the company and the pension fund as a result of the company's decision to implement these measures. The end of the workforce reduction or restructuring is deemed to be the date on which the last insured involuntarily leaves the company and the pension fund.

An insured is deemed to have withdrawn involuntarily if his/her employment relationship was terminated by the employer. However, a withdrawal is also regarded as involuntary if the insured terminates the employment relationship him/herself within six months of the announcement of the workforce reduction or restructuring in order to pre-empt a termination by the employer or because he/she does not accept the new employment conditions.

5.3 Conditions for a total liquidation

A pension fund is liquidated totally if the affiliation contract is terminated in full. However, a total liquidation is not carried out if:

a) the pension fund changes pension providers and there is no actuarial deficiency; or
b) the pension fund has neither active insured nor pensioners as members at the time of the termination of the affiliation contract.

6 Procedure for the partial or total liquidation of a pension fund

6.1 Establishment of conditions

The pension fund commission must establish whether a reduction in the workforce or a restructuring will lead to a partial liquidation of the pension fund.

6.2 Execution of a partial or total liquidation

The Foundation is responsible for carrying out the partial or total liquidation of a pension fund. The employer and the pension fund commission are obliged to provide the Foundation on request with all the information it needs to carry out its task.

6.3 Date of partial liquidation

The date of the partial liquidation is the end of the quarter following on the end of the workforce reduction or restructuring of the company (cf. par. 5.2). This is the date used for calculating the disposable assets and/or actuarial deficiency.

6.4 Date of total liquidation

The total liquidation is carried out on the date on which the contract is terminated. This is the date used for calculating the disposable assets and/or actuarial deficiency.

6.5 Calculation of pension fund's disposable assets/actuarial deficiency

The pension fund's disposable assets or actuarial deficiency comprise:

a) Any disposable assets or actuarial deficiency allocated to the pension fund during the partial liquidation of the Foundation;
b) The pension fund's disposable assets and fluctuation reserve;
c) The employer contribution reserve if the employer discontinues its business operations.

6.6 Allocating the disposable assets

6.6.1 Allocation to active insured and pensioners

The group of active insured includes all persons who, as active employees insured for retirement benefits, involuntarily leave the pension fund during the workforce reduction or restructuring (cf. par. 5.2) (sub-group of withdrawing active insured) as well as all employees who are still members of the pension fund when the workforce reduction or restructuring ends (sub-group of remaining active insured).

The group of pensioners includes all pensioners who are still members of the pension fund when the workforce reduction or restructuring ends.

The free assets are divided between the two groups at the ratio of the total retirement assets (on the partial liquidation date or the prior withdrawal date) of the active insured and the disability pensioners to the total actuarial reserves of the lifelong pensioners (on the date of the partial liquidation).

6.6.2 Individual allocation of the share of persons actively insured

The allocation formula is derived by considering the duration of the insurance cover, the retirement savings, the person's age or salary (as of the date of partial liquidation or as of the previous departure date). A combination of these factors is applied. The specific definition of the allocation formula must be justified and the principle of equal treatment may not be breached as a result of the combination of allocation criteria.

6.6.3 Transfer of claims

As a general rule the assets due to the withdrawing active insured are allocated to them individually. If at least ten insured join a new pension fund as a group (collective withdrawal), their share in the assets is transferred collectively.

The share of the assets that is due to the remaining active insured and the pensioners is not allocated to individuals and remains with the pension fund.

6.7 Allocating a deficit (actuarial deficiency)

If pursuant to par. 6.5 the pension fund has an actuarial deficiency instead of disposable assets, this deficiency is divided between the withdrawing and remaining active insured. The definition of this group of persons is the same as for the distribution of the disposable assets.

The actuarial deficiency is divided between the persons in question on the basis of the retirement assets that were calculated as follows:

Benefits brought into the pension fund and purchases of additional benefits made in the last twelve months before the withdrawal are not included in the calculation of the pension fund's share in the actuarial deficiency.

Advance withdrawals under the promotion of home ownership scheme and payouts in the wake of a divorce in the last twelve months are included in the calculation of the pension fund's share of the actuarial deficiency.

The pension funds' fluctuation reserves and disposable assets are at the disposal of the pension funds and must be used to reduce or eliminate the pension fund's actuarial deficiency.

The share of the actuarial deficiency that falls to the withdrawing active insured is deducted individually from their vested benefits. This must not, however, reduce the retirement assets pursuant to Art. 15 BVG.

The share of the actuarial deficiency that falls to the remaining active insured is not allocated to individuals and remains with the pension fund.

7 Procedure and notification requirements for the partial or total liquidation of pension funds

7.1 Employer's obligation to notify

The employer is obliged to inform the Foundation without delay of any reduction in the workforce or restructuring of the company that might lead to a partial liquidation.

7.2 Resolution to partially or totally liquidate pension funds

The material issues, such as the establishment of the partial or total liquidation of the pension fund, the amount of the disposable assets or actuarial deficiency and the plan of distribution, are recorded in writing in the form of a declaratory decision by the pension fund commission.

7.3 Informing the insured

If the conditions for the partial or total liquidation of a pension fund are fulfilled and a liquidation procedure is carried out, the Foundation must inform the insured and pensioners about the facts and the next steps via the pension fund commission.

As soon as the plan of distribution has been drawn up and the declaratory decision has been taken, the Foundation must inform all the persons affected via the pension fund commission of the decision to partially or totally liquidate the pension fund, the amount of the disposable assets or actuarial deficiency, and the plan of distribution:
a) The affected persons have the right to inspect the Foundation's records and, if desired, appeal against the decision of the pension fund commission within 30 days of receiving the above information;
b) If the dispute cannot be settled amicably, the Foundation sets the affected persons a deadline of 30 days to submit the conditions, procedure and plan of distribution to the supervisory authority for review and a decision.

7.4 Execution

The distribution plan is executed once it has become legally valid. The plan of distribution becomes legally valid if:
a) no objections were lodged;
b) all objections were settled amicably and/or none of the persons involved contacted the supervisory authority within the 30-day deadline;
c) the supervisory authority declared the conditions, procedure and distribution plan to be legally valid (decree).

If in the case of an actuarial deficiency the total or insufficiently reduced vested benefits were transferred, the insured must repay the excess amount that was transferred.

8 Final provisions

8.1 Cost sharing

The pension fund in question can be expected to pay an additional cost contribution to cover extraordinary expenses relating to the partial or total liquidation of a pension fund, expert opinions relating to the settlement of objections and appeals, etc.

8.2 Unregulated cases

The Foundation will decide on any cases that are not expressly governed by these regulations by applying the regulations mutatis mutandis in accordance with the legal provisions.

8.3 Issuing and amending the regulations

The regulations and any later amendments are issued by the Board of Trustees and approved by the supervisory authority.

8.4 Entry into force

These regulations enter into force on 15 November 2018 and replace the regulations dated 1 January 2014.

Schwyz, 8 August 2018

Tellco pkPRO
Board of Trustees

Peter Hofmann
Chairman

Thomas Kopp
Vice-president

In case of differing interpretations, the German text is authoritative.