

## Information sheet «Cohabitation/lump sum payable at death»

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### 1. General

#### 1.1. Introduction

Social tendencies and values have developed and undergone various changes since the Federal Law on Occupational Retirement, Survivors' and Disability Pension Plans (BVG/LPP) entered into force in 1985. To take this into account, new benefits have been introduced which recognize cohabitants as beneficiaries. This information sheet is intended to provide a clear overview of your options and help you avoid potential unwanted consequences.

#### 1.2. General provisions

With the introduction of the new Pension Fund Regulations from 1 January 2011, it is no longer a mandatory requirement that Profond Pension Fund needs to be notified of a cohabitee relationship or an order of beneficiaries during the insured person's lifetime. Instead, you can now include an appropriate clause in your devise (last will or testamentary contract). Please bear in mind that such a clause must refer clearly and unambiguously to your occupational pension plan. In general, more recent orders of beneficiaries will supersede any pre-existing ones. However, if you lay down the arrangements for your beneficiaries in an testa-

mentary contract, the legal position is that these arrangements, unlike those made in a last will, will take precedence over ordinary orders of beneficiaries and will therefore remain binding even if your pension fund has received a more recent order of beneficiaries.

Please remember that Profond Pension Fund will only check specific entitlements to benefits after the death of the insured person. It is also the responsibility of the claimants to furnish proof that they meet the requirements for entitlement within 3 months of the insured person's death.

We recommend beneficiaries to submit the following documents as evidence of their entitlement:

#### Cohabitees

- Support or cohabitation agreement (you will find a model contract at [www.profond.ch](http://www.profond.ch))
- Confirmation of marital status from the appropriate municipal authority of your residence
- Evidence showing that the cohabitants had been living together without interruption for the past five years (proof of residence of both persons) and/or
- evidence showing that the deceased had a maintenance obligation in respect of a common child

Beneficiaries claiming lump sum payable at death

- Any evidence showing that the deceased had been providing substantial support

All claims on the part of the cohabitee will become void if either cohabitee gets married or if the relationship is dissolved.

Please note that payment of the surviving partner's pension and the lump sum payable at death is governed by the rules set out in the Pension Fund Regulations and legal requirements in force at the time of death of the insured person. The regulations are subjugated to amendments.

## 2. Surviving partner's pension

### 2.1. Requirements

Under art. 27 of the Pension Fund Regulations of Profond Pension Fund, the surviving cohabitee of an insured person is entitled to a survivor's pension on the death of the insured person provided that all of the following conditions are met:

- There is no impediment to marriage within the meaning of Art. 94 – 96 of the Swiss Civil Code (SCC),
- Both cohabitees are unmarried and are not living in a registered partnership,
- There is evidence to show that up until the time of death the deceased insured person and his/her cohabitee had lived together in a shared household and in a stable and exclusive relationship for an uninterrupted period of at least five years, or the cohabitee must be supporting at least one common child
- At the time when the pension entitlement commences, the surviving partner does not receive any survivor's benefits (such as a surviving spouse's or surviving partner's pension) and/or has received no corresponding lump-sum payment in the past.

### 2.2. Documents/notification period

A requirement for payment of the survivor's pension is that Profond Pension Fund must have been notified of the existence of the partnership during the insured person's lifetime. To provide such notification, please use the form „Communication of cohabitation“. The partner can also be named as a beneficiary in a devise, provided the relevant clause explicitly refers to occupational pension arrange-

ments. The devise must be submitted to Profond Pension Fund within three months of the insured person's death at the latest.

We recommend beneficiaries to submit the following documents as evidence of their entitlement:

Cohabitees

- Support or cohabitation agreement (you will find a model contract at [www.profond.ch](http://www.profond.ch))
- Confirmation of marital status from the appropriate municipal authority of your residence
- Evidence showing that the cohabitees had been living together without interruption for the past five years (proof of residence of both persons) and/or
- Evidence showing that the deceased had a maintenance obligation in respect of a common child living in the same household

## 3. Lump sum payable at death

### 3.1. Requirements

Under art. 30, if an insured person dies before drawing a retirement pension, before reaching regular retirement age or before drawing a disability pension and no surviving spouse's or survivor's pension is payable, the accrued retirement savings will become due in the form of a lump sum payable at death.

Your employer's pension plan may provide for an additional lump sum payable at death. The amount of which will be defined in the pension plan. If the insured person dies before drawing a retirement pension, before reaching regular retirement age or before drawing a disability pension, this sum will become due independently of other benefits payable at death.

The law allows pension funds to specify additional beneficiaries in their pension fund regulations (BVG Arts. 19 to 20a in conjunction with Art. 49 para. 2 BVG/LPP). The Profond Pension Fund applies this option as follows:

- a) Surviving spouse or registered partner
- b) Children of the deceased who are eligible for orphans' pensions
- c) Surviving cohabitees or other persons who were receiving substantial financial support from the deceased

- d) Children of the deceased who are not eligible for orphans' pensions and the parents and siblings of the deceased

Once an entitled person has been found, this will always exclude any entitlement on the part of all lower-ranking groups of persons. If there are several persons within a given group, the lump sum will generally be paid out in equal shares. The insured person may specify differing shares for individual beneficiaries within groups c) or d) by means of a written notice. However, it is not possible to mix entitlements beyond a given group (e.g. 50% for the cohabitee and 25% each for the two children).

This means that if you are providing child support (either for children from the relationship registered with us or from any other relationship), those children will take precedence over your cohabitee in the order of beneficiaries for as long as they remain entitled to an orphan's pension under the regulations. Once the cohabitee has been made a beneficiary, adult children who are not entitled to orphans' pensions themselves and other family members, can only be considered in exceptional cases. The requirement for family members to be made beneficiaries is that they have already been receiving substantial support during the insured person's lifetime and are explicitly named as beneficiaries in accordance with Art. 30 letter c of the Pension Fund Regulations.

### 3.2. Documents/notification period

To notify us of your beneficiary arrangements, please use the form „Order of beneficiaries for lump sum payable at death“. Beneficiaries can also be named in a devise provided the relevant clause explicitly refers to occupational pension arrangements. The devise must be submitted to Profond Pension Fund within three months of the insured person's death at the latest.

We recommend beneficiaries to submit the following documents as evidence of their entitlement:

#### Cohabitees

- Support or cohabitation agreement (you will find a model contract at [www.profond.ch](http://www.profond.ch))
- Confirmation of marital status from the appropriate municipal authority of your residence
- Evidence showing that the cohabitees had been living together without interruption for the past five years (proof of residence of both persons)

and/or

- Evidence showing that the deceased had a maintenance obligation in respect of a common child living in the same household

Other persons entitled to benefits

- Evidence showing that the deceased had been providing substantial support

## 4. Examples

**4.1.** Mr Shaw is 52 years old and is insured with Profond Pension Fund. He has been living with Ms Morris in a common household for three years and would like to name his partner as a beneficiary under his occupational pension plan. Is this possible?

Yes, we can be notified of a cohabitation even if the conditions for naming the partner as a beneficiary are not yet fulfilled. The decisive factor is purely whether the conditions are fulfilled at the time when pension benefits are due for payment.

**4.2.** Ms Miller is 50, divorced and has 3 children aged 16, 19 and 27. She has been living in a cohabitation with Mr Smith for an uninterrupted period of eight years. She is insured with Profond Pension Fund and has submitted the form „Communication of cohabitation“. Evidence has been provided to show that all children are still in education or training. The pension plan of the affiliated company covers a survivor's pension, but no additional lump sum payable at death. Who is entitled to what benefits in the event of Ms Miller dying before reaching retirement age?

Pensions:

- Survivor's pension for the cohabitee
- Orphan's pensions for the children of age 16 and 19
- No orphan's pension for the 27-year-old child as he is already above the age limit (25)

Lump-sum payable at death:

- No lump sum payable at death

**4.3.** The same situation as in example 4.2., except that Ms Miller and Mr Smith have only been living in a cohabitation for three years. Also, during her lifetime Ms Miller notified us that the lump sum payable at death was to be shared equally among her three children. So who is now entitled to what benefits?

Pensions:

- No survivor's pension for the cohabitee
- Orphans' pensions for the children of age 16 and 19
- No orphan's pension for the 27-year-old child as he is already above the age limit (25)

Lump-sum payable at death:

- As no survivor's or surviving spouse's pension is due, the beneficiaries are entitled to a lump sum payable at death equal to the accrued retirement savings.  
In the order of beneficiaries, the children entitled to orphans' pensions take precedence over the cohabitee and the child with no pension entitlement. This means that – contrary to the wishes of the deceased – the lump sum payable at death can only be distributed among the two children entitled to orphans' pensions.

**4.4.** Mr Henderson, a 58-year-old widower, has 2 children aged 26 and 30. He is insured with Profond Pension Fund and under the written order of beneficiaries submitted to us the younger child is to receive 60% of the lump sum payable at death, while the older child is to receive 40%. In addition, six years ago Mr Henderson entered into a cohabitation with Ms Maloney. In his last will, Mr Henderson expressly stipulated that his cohabitee should receive a survivor's pension from his occupational pension plan. The pension plan of the affiliated company provides both for the lump sum payable at death due under the regulations and also for an additional lump sum payable at death. Who is entitled to what benefits in the event of Mr Henderson dying before reaching retirement age?

Pensions:

- Survivor's pension for the cohabitee
- No orphans' pensions for the children as they are already above the age limit (25).

Lump-sum payable at death:

- No lump sum payable at death as the beneficiary is entitled to a surviving partner's pension.

Additional lump sum payable at death:

- If Mr Henderson provided his children with substantial support up until his death, the lump sum

payable at death will be shared between them in the proportions he stipulated unless he expressly named his cohabitee as the beneficiary of the lump sum payable at death.

If there is no evidence of the children having been provided with substantial support, all of the lump sum payable at death will be paid to the cohabitee as she ranks higher in the legal order of beneficiaries than the children with no entitlement to orphans' pensions.

The above examples are merely provided to illustrate various possible situations in people's lives. They cannot be used to infer any legal claims. Moreover, the content is based on the current legal and regulatory position (status as of: 1.1.2011). Profond Pension Fund cannot assume any liability for future changes.