

## **Guidelines to determine eligibility for spousal benefits under articles 34 and 35 of the UNJSPF Regulations**

### Background and underlying principles

1. Given recent changes in national legislations and the legal environment, as well as human resources policies of the 23 UNJSPF member organizations, the issue of the determination of eligibility to receive spousal benefits under articles 34 and 35, 35 bis<sup>i</sup> and 35 ter is constantly evolving and has, therefore, been an ongoing item on the agenda of the meetings of the United Nations Joint Staff Pension Board. The Pension Board has extended the interpretation of marriage to unions/partnerships lawfully entered into and legally recognized by the authorities of the country of nationality of a participant as establishing a legal relationship of mutual dependence under the relevant national law and therefore having *similar legal effects as a marriage*.
2. As the nature of a UNJSPF spousal benefit is that of a survivor's benefit, the final determination of eligibility can only be done at the time of the death of the UNJSPF participant/retiree. However, the Fund has received requests from active UNJSPF participants to confirm the understanding that a spousal benefit would be payable in their cases. For that purpose, the Pension Board requested, at its 60<sup>th</sup> session in 2013, that the CEO/Secretary issue Guidelines as to how to implement the relevant UNJSPF articles for pension benefit purposes, bearing in mind that only the CEO, in accordance with article 7 of the Fund's Regulations, has the authority to determine the eligibility for pension benefit entitlements and to certify payments.
3. The purpose of these Guidelines is to address the potential uncertainty regarding the status of those partners who may be recognized as spouses by the employing organizations under their Staff Rules and Regulations for the purposes of receiving certain employment benefits, but who may not be deemed eligible by the Pension Fund to receive a UNJSPF spousal benefit under the Fund's Regulations. An important consideration is to ensure equal and consistent treatment of all UNJSPF participants.
4. While the human resources practices of employing organizations vary and may lead to different approaches, including recognition of marriage on the basis of the country of residence (rather than nationality), such practices do not change the Fund's definition and basis for recognition of marriage for the purposes of UNJSPF benefits under its Regulations.
5. These Guidelines establish clear accountability for staff members as participants in the Fund, and for the employing organizations, in particular with regard to reporting personal status and providing evidence in support thereof to the Fund in accordance with Administrative Rules B.1, B.2 and B.3 of the Fund. The Fund will continue to provide assistance and guidance to its member

organizations on individual cases as long as it is provided with appropriate supporting documentation, as detailed below. As it reviews individual cases, the Fund keeps a list of commonly accepted unions, which have already been recognized by the Fund for the purposes of eligibility for survivor's benefits under the UNJSPF Regulations. The Fund publishes such a list for the information and guidance of participants and member organizations (Annex 1). It should be noted that the list is constantly changing, and the Fund will make its best efforts to update it regularly.

6. The effective date of recognition of personal status for purposes of benefits under the Fund's Regulations follows the effective day of national legislation as well as the actual date of celebration of the marriage/union following the revised national legislation and there is no retroactivity in recognition. If the legislation changes *after* the staff member's/ participant's separation from service, a former participant is considered eligible to elect an annuity under article 35 ter of the UNJSPF Regulations.

#### Responsibility of the staff member/UNJSPF participant

7. All staff members and UNJSPF participants are reminded to report their personal status at time of their entry on duty, or any subsequent changes thereof, as well as provide the required evidence in support of the status to their employing organizations. The Fund only recognizes information provided and in its records at the time of separation or death in service. Failure to accurately report the personal status and/or submit the required documentary evidence in support of the status may result in the ineligibility of the spouse or former spouse for UNJSPF spousal benefits.

8. Exceptionally, the Fund may, at the direct request of a participant that is made before separation or death in service, accept a different personal status than the one reported by the employing organization, provided that such personal status is consistent with the Regulations of the Fund as interpreted by the Pension Board and recognized by the authorities of any country of which the participant is a national. Such requests are accepted only after the staff member/participant has approached the employing organization, which has declined to record and report the personal status on the basis of its human resources policy. Evidence of such refusal by the employing organization should be included in the participant's request to the Fund.

9. In any event, in view of the Fund's Administrative Rule B.3, the participant must inform and provide the required documentation to the Fund regarding the union/partnership before his/her separation from service/death in service. In all cases the participant shall provide the Fund with a copy of his/her partner's passport or other official ID that bears the owner's photograph and original signature.

### Responsibility of the UNJSPF member organization to report the status of the UNJSPF participants

10. The Fund will be guided in its final determination of eligibility to survivors' benefits under articles 34 and 35 by the personal status reported by the employing organization prior to the participant's separation or death in service, provided that such determination has been made within the definition of the spouse as set forth in paragraph one above and verified pursuant to the relevant procedures established in paragraphs 13 and 14 below.
11. The member organizations should provide any required documentation to prove the registration of a union by a competent national authority - and/or its dissolution - as well as the verification of the legal status of the union under the relevant national law. All documents should be translated either into French or English, which are the working languages of the Fund.
12. Failure by a member organization to correctly report the personal status of a UNJSPF participant prior to his/her separation from or death in service that is attributable to the member organization, shall result in additional actuarial costs to be paid by the member organization in accordance with UNJSPF Administrative Rule B.3 (b).

### Documentation and verification of status

13. The verification process by the employing organization should include, but is not limited to:
  - a) receipt of **documentation** from the staff member/UNJSPF participant issued by the competent national authorities attesting to the personal status claimed;
  - b) if the national law does not require any written evidence to assess the personal status and eligibility for benefits, the staff member/UNJSPF participant should provide **a (sworn) affidavit from a reputable source** to facilitate the review/verification;
  - c) receipt of documentary evidence that **the competent authorities of the country of nationality** of the staff member/UNJSPF participant **have confirmed** that the personal status claimed by the staff member/UNJSPF participant is recognized by the law of the country of nationality of the UNJSPF participant and meets the requirements of the Pension Fund and that the documents provided are sufficient to establish such status;
  - d) In cases where the union has been entered into in a country, different than that of the nationality of the staff member/UNJSPF participant making the claim, the competent national authorities of the other country of which the staff member/UNJSPF participant is a national would equally need to advise on the legality of the union under their respective national law, as well as confirm that under their national law the status claimed by the staff member/UNJSPF participant has the similar legal effects as marriage and that the documents provided are sufficient to establish such status under their national law.

14. Before establishing any entitlements, the Pension Fund requires verification of the following:
- i) the participant's date of birth;
  - ii) the participant's marital/personal status by copy of a decree or other registration by the national authorities of the country of nationality of the participant;
  - iii) the spouse(s)' date of birth;
  - iv) a divorce/dissolution, if applicable, by a copy of a divorce or dissolution decree, by the national authorities of the country of nationality of the participant (act of equal legal standing for dissolution as was required for registration/recognition of the union under the national law).

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<sup>i</sup> Relevant extracts of articles 34, 35 and 35 bis of the UNJSPF Regulations:

**ARTICLE 34 - WIDOW'S BENEFIT**

*(a) A widow's benefit shall, subject to article 41 and to (b) below, be payable to the surviving female spouse of a participant who was entitled to a retirement, early retirement, deferred retirement or disability benefit at the date of his death, or who died in service, if she was married to him at the date of his death in service or, if he was separated prior to his death, she was married to him at the date of separation and remained married to him until his death.*

**ARTICLE 35 - WIDOWER'S BENEFIT**

*A widower's benefit, at the rates and under the conditions applicable in article 34 to a widow's benefit, shall be payable to the surviving male spouse of a participant.*

**ART 35 BIS -DIVORCED SURVIVING SPOUSE'S BENEFIT**

*(a) Any divorced spouse of a participant or former participant, separated on or after 1 April 1999, who was entitled to a retirement, early retirement, deferred retirement or disability benefit, or of a participant who died in service on or after that date, may, subject to the provisions of article 34(b) (applicable also to widowers), request a former spouse's benefit, if the conditions specified in paragraph (b) below are fulfilled.*

*(b) Subject to paragraph (d) below, the divorced spouse is entitled to the benefit set out in paragraph (c) below, payable prospectively following receipt of the request for a divorced surviving spouse's benefit, if, in the opinion of the Chief Executive Officer of the Fund, all of the following conditions are fulfilled:*

- (i) The participant had been married to the former spouse for a continuous period of at least ten years, during which contributions were paid to the Fund on account of the participant or the participant was awarded a disability benefit under article 33 of the Regulations;*
- (ii) The participant's death occurred within 15 years of the date when the divorce became final, unless the former spouse proves that at the time of death the participant was under a legal obligation to pay maintenance to the former spouse;*
- (iii) The former spouse has reached the age of 40. Otherwise the benefit entitlement shall commence on the day immediately following the day that age is reached; and*
- (iv) Evidence is provided that a divorce settlement does not have an express renunciation of UNJSPF pension benefit entitlements;*