



SECTION:	Surplus
INDEX NO.:	S900-910
TITLE:	Distribution of Surplus to Employer on Partial Wind Up - PBA s. 70(5) - Regulation 909 s. 8(1)(b) and 8(2)
APPROVED BY:	Superintendent of Financial Services
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Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 (FSCO Act), Pension Benefits Act, R.S.O. 1990, c. P.8 (PBA) or Regulation 909, R.R.O. 1990 (Regulation), the FSCO Act, PBA or Regulation govern.

This policy addresses the treatment of surplus allocated to the employer (“employer surplus”) on the partial wind up of a pension plan and applies where the Superintendent of Financial Services (Superintendent) has consented to the payment of surplus to the employer under section 78(1) of the PBA and section 8(1)(b), or section 8(2) of the Regulation. The surplus allocation must be identified in a wind up report prepared on the partial wind up of a pension plan and approved by the Superintendent after considering all legislative requirements, including section 70(5) of the PBA.

Method of Distributing Employer Surplus

To distribute the employer surplus, the employer may choose:

- (a) to receive the employer surplus as a cash payment;
- (b) to allocate the employer surplus to the ongoing portion of the pension plan; or
- (c) a combination of (a) and (b).

The employer’s choice for distribution of employer surplus may form part of a surplus sharing agreement or may be decided by the employer subsequent to the completion of that agreement. In either situation, the distribution must conform with the proposals set out in the wind up report, or addendum, approved by the Superintendent.

Timing of Employer Surplus Distribution

Before the employer surplus can be distributed, the administrator must confirm in writing to the Superintendent that each of the conditions set out in the approvals previously granted by the Superintendent has been met. Where the surplus sharing agreement does not include a statement of the employer’s choice for the distribution of employer surplus, the Superintendent must also be advised of how the employer surplus will be distributed. If satisfied, the Superintendent will approve the distribution of employer surplus from the wound up portion of the pension plan.

All assets in the wound up portion of the pension plan continue to be governed by the PBA, plan terms and statement of investment policies and procedures. As long as the assets remain in the wound up portion of the pension plan, they may not be used for any purposes of the ongoing pension plan.

Status of Employer Surplus Distributed to the Ongoing Pension Plan

Once the employer surplus has been distributed in accordance with the Superintendent's approval, any portion allocated to the ongoing pension plan becomes simply an asset of the ongoing pension plan. The value of the employer surplus distributed to the ongoing pension plan is not a prepayment of any kind; is not a contribution to the pension plan; and does not form part of the plan's prior year credit balance. The employer will have no more claim, control or ownership over this amount than it would otherwise have over any asset in the ongoing pension plan.

Completion of the Partial Wind Up

The plan administrator must advise the Superintendent in writing once all assets have been distributed, including employer surplus from the wound up portion of the pension plan. Once the Superintendent is advised of this distribution, the file on the partial wind up will be closed.