



SECTION: Wind Up

INDEX NO.: W100-105

TITLE: Conditional Notice of Intended Wind Up Not Permitted
- PBA ss. 68, 77.1, 77.2 and 79(3)

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.

*Note: The electronic version of this policy, including direct access to all linked references, is available on FSCO's website at www.fSCO.gov.on.ca. All pension policies can be accessed from the **Pensions** section of the website through the **Pension Policies** link.*

Can an employer give a notice of intended wind up that is conditional on acceptance by the Superintendent of Financial Services (Superintendent) of an application for payment of surplus to the employer?

Sections 68, 77.1 and 77.2 of the PBA give an employer (or plan administrator in the case of a multi-employer pension plan) the right to wind up a pension plan either in part or in full. However, these provisions do not contemplate a decision by the employer or plan administrator to wind up the pension plan that is conditional on the happening of some event. Consequently, a notice of intended wind up to the Superintendent, members, former members, trade unions representing members and to “any other person entitled to a payment from the pension plan” that is conditional on the outcome of an application for payment of surplus to the employer would not meet the requirements of section 68 of the PBA.

Further, section 79(3) of the PBA would prevent the Superintendent from considering a surplus withdrawal application that is made in conjunction with a conditional notice of intended wind up. Section 79(3) provides authority to the Superintendent to consider an application for payment of surplus to the employer only in respect of a plan that is being wound up. In a plan in which the employer has given a conditional notice of intended wind up, the Superintendent cannot be certain whether or not the plan is actually being wound up. Consequently, the Superintendent would not have authority to consider the application.