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SECTION:	Wind Up
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TITLE:	Distribution of Benefits on Partial Wind Up Where Immediate or Deferred Pensions are Not Purchased
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](http://www.fSCO.gov.on.ca). All pension policies can be accessed from the **Pensions** section of the website through the **Pension Policies** link.*

Administrators of pension plans (administrators) are no longer required to purchase annuities for members affected by a partial wind up who are receiving pension payments, or who chose or were deemed to have chosen a deferred pension (Affected Group). However, administrators may still purchase annuities for the Affected Group, as provided under section 43 of the PBA, if it determines that it is prudent to do so.

This policy outlines a procedure for administrators to follow in the event that the administrator chooses **not** to purchase annuities for the Affected Group. This policy also provides guidance on the determination of the value of the liabilities for the Affected Group and the timing of the transfer of the assets and liabilities relating to the Affected Group to the on-going portion of the pension plan. Unless specifically noted otherwise in this policy, the term "transfer" refers to the transfer of the assets and liabilities of the Affected Group.

Please note that this policy does not apply to members affected by the partial wind up who are eligible and have elected a transfer of the commuted value of the pension benefit out of the pension plan under section 42(1) of the PBA.

If administrators and their agents have questions about plan wind ups, they should refer to the PBA and Regulation. Additional information may also be obtained from other policies published by FSCO that deal with wind up issues. Policies are intended to clarify the interpretation of the PBA and Regulation in certain situations and to assist administrators and their agents in understanding the requirements of the PBA, Regulation and FSCO's practices so that full compliance can be achieved.

## **Background**

The July 29, 2004 Supreme Court of Canada decision in respect of Monsanto Canada Inc. required the distribution of any surplus related to the wound up portion of the plan as part of the partial wind up process in order to complete the distribution of assets related to the partial wind up. In this process, the administrator was required to distribute all of the assets of the plan associated with the partial wind up. To satisfy that requirement, the Superintendent took the position that the purchase of annuities was necessary to settle the benefits that were payable to members, former members (including retired members) and other persons affected by the wind up who did not elect a transfer of the commuted value of their benefits. However, on December 2, 2009, the Financial Services Tribunal in a decision in respect of an Imperial Oil Limited pension plan held that administrators may satisfy the requirement to distribute plan assets related to the Affected Group's benefits on partial wind up by transferring the assets to the on-going portion of the plan and are not required to purchase annuities for this group.

## **Communicating the impact of the decision not to purchase annuities**

In the event of a partial wind up, the plan administrator will need to make a decision as to whether or not to purchase annuities for some or all of the Affected Group. This decision must be communicated to FSCO and to all persons affected by the partial wind up.

If the administrator decides not to purchase some or all of the annuities, the administrator will be required to transfer the assets and liabilities in respect of the members of the Affected Group who chose to receive their pension benefits from the pension plan, to the on-going portion of the pension plan in order to complete the distribution of assets related to the partial wind up (Note: The transfer is said to be a notional transfer as the assets and liabilities of the Affected Group will simply remain in the plan).

FSCO will require the administrator to advise all persons affected by the partial wind up as to the impact on their pension benefit when a pension payment is being provided under the pension plan as opposed to it being provided through an annuity purchased from an insurance company. This information is to be included in the individual statement issued to all persons affected by the partial wind up (setting out the person's entitlement under the plan and the options available to those persons) as required under section 72(1) of the PBA and section 28(2) of the Regulation. The information being provided should clearly indicate that their pension benefits will be payable or continued to be payable from the pension plan and that any subsequent settlement will be subject to the terms of the plan and its funded status at that time.

## **Partial Windup Reports already Filed**

In a situation where a partial wind up report has been filed with FSCO indicating that annuities are to be purchased for the Affected Group and the administrator subsequently decides not to purchase the annuities, the administrator is required to advise FSCO of the decision, revise the report to reflect the change and file the revised report with FSCO for review. Furthermore, for those members who made elections based on the administrator's previous decision to purchase annuities, the administrator is required to provide a revised statement to the Affected Members who made an election to receive an immediate or deferred pension on the premise that annuities will be purchased for them. The revised statement will include the information described above where annuities are not being purchased.

## **Basis for Determining the Value of Immediate and Deferred Pensions**

Section 29(8) of the Regulation does not permit the payment of commuted values or purchase of annuities until the partial wind up deficit, if any, has been fully funded (except for a payment of the current value of any additional voluntary and/or required contributions made by the member employee prior to the wind up date). Where there is a partial wind up deficit as at the wind up date, section 31(2) of the Regulation requires additional funding over no more than 5 years annually in advance or funding by way of an immediate lump sum.

Where annuities are purchased for the Affected Group through an insurance company, the cost to fully settle the liabilities is known and the wind up surplus or deficit is calculated as the difference between the assets allocated to the partial wind up group and the sum of the following:

- (a) commuted value entitlements (for eligible members who elect commuted value transfers under section 73(2) of the PBA),
- (b) any cash lump sum payment payable under sections 39(4), 50, 63(2), 63(3) and 63(4) of the PBA,
- (c) the annuity purchase premium paid to a life insurance company (for members who are eligible for and chose or were deemed to have chosen an immediate or a deferred pension), and
- (d) partial wind up expenses.

Where an administrator chooses not to purchase annuities for the Affected Group, the wind up surplus or deficit is calculated the same way as above except that, instead of an actual annuity purchase premium paid to a life insurance company, the value of the immediate and deferred pensions would be based on the applicable guidance from the Educational Notes published by the Canadian Institute of Actuaries' Committee on Pension Plan Financial Reporting for the purpose of estimating annuity premiums as at the date a determination is to be used.

#### **Timing of Transfer of the Assets and Liabilities of the Affected Group**

Where there is a deficit as at the partial wind up date, section 75 of the PBA and section 31 of the Regulation require additional contributions to be made into the pension fund by the plan sponsor to increase the level of the funded position of the wind up assets to 100%. Until this funding is complete (either by way of amortized payments over no more than 5 years or an immediate lump sum), the administrator is required to track the assets and liabilities relating to the partial wind up separate and apart from the assets and liabilities relating to the on-going portion of the pension plan. When there is no further amount to be funded under section 75 of the PBA, the transfer of the assets and liabilities relating to the Affected Group to the on-going portion of the pension plan can occur once written confirmation from the actuary of full funding of the partial wind up is received by FSCO. FSCO will also require administrators to provide written confirmation to FSCO that the transfer of the assets and liabilities of Affected Group to the on-going portion of the pension plan has occurred. Confirmation about the transfer as set out above can be included in the annual reports required by section 32 of the Regulation, or can be provided in a separate letter addressed to the Superintendent.

In a situation where the sponsor of a pension plan is required to fund a partial wind up deficit and the financial position of the wound up portion of the pension fund after settlement of all benefits reveals there are assets remaining, the employer may apply for a refund of overpayment of contributions (under section 78(4) of the PBA) equal to an amount that is not in excess of the required payments made to fund the partial wind up deficit. If, after the refund of overpayment to the employer, there still remain assets then that amount may be distributed as surplus assets in accordance with the PBA and Regulation.

Where there is a surplus as at the partial wind up date and the financial position of the wound up portion of the pension fund after the wind up effective date shifts to a deficit position, the employer must pay the deficit in the manner and the times set out in section 31 of the Regulation. If the payment date is more than five years from the partial wind up date the payment must be paid in a lump sum payment. Once funding is complete, the transfer of the assets and liabilities relating to the Affected Group to the on-going portion of the pension plan can occur provided that confirmation of full funding of the partial wind up is received by FSCO.

Where there is a surplus as at the wind up date, the transfer of the assets and liabilities of the Affected Group can occur prior to the completion of the surplus distribution. The form of surplus distribution may be a lump sum cash payment or an increase to pension benefits to members affected by the wind up. For more information regarding the distribution of surplus on partial wind up, see policies [S900-901 \("Allocation of Surplus to Members, Former Members and Other Persons on Wind Up"\)](#) and [S900-910 \("Distribution of Surplus to Employer on Partial Wind Up"\)](#).

### **Tracking the pension benefits of the Affected Group**

The notional split between the wound up and on-going portions of the pension plan must be maintained until all assets relating to the partial wind up have been settled, including a surplus distribution, if any. That is, upon the (notional) transfer of the assets and liabilities relating to the Affected Group to the on-going portion of the pension plan, the administrator must ensure that Affected Group receive the pension benefit they are entitled to (including any grow-in entitlement as provided for Ontario members, early retirement subsidies, etc.)

### **Completion of Partial Wind Up**

The administrator must advise the Superintendent in writing once all assets have been distributed 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.