Financial Services Commission of Ontario
Commission des services financiers de l'Ontario

Ontario

SECTION:	Wind Up
INDEX NO.:	W100-234
TITLE:	Payment of Benefits on Partial Wind Up - PBA ss. 39(4), 44(7), 50(1), 63(2), 72, 73, 75 and 77.1-77.9 - Regulation 909 ss. 28(2), 28(2.1), 28(2.2) and 28(3)
APPROVED BY:	Superintendent of Financial Services
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REPLACES:	W100-232

This policy replaces W100-232 (Distribution of Benefits on Partial Wind Up) as of the effective date of this policy.

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.*

This policy addresses the payment of benefits that are provided under the terms of a pension plan on a partial wind up. In this policy, the term "benefits" does not include any benefits arising from the distribution of surplus on a partial wind up. On full wind up of a pension plan, all of the plan's assets must be distributed. Similarly, on partial wind up, the administrator of the pension plan (administrator) must distribute all assets related to the wound up portion of the pension plan.

The PBA was amended on July 1, 2012 to eliminate any partial wind up where the effective date of the partial wind up is on or after July 1, 2012**.** A pension plan may still be partially wound up, if the effective date of the partial wind up is before July 1, 2012. The effective date of the partial wind up may be determined after July 1, 2012**.**

Where a pension plan is partially wound up, certain sections of the PBA and Regulation that relate to a full wind up of a plan apply, with necessary modifications, to the partial wind up of the plan.

Refer to 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) for information on the distribution of surplus on a partial wind up.

Options for Payment of Benefits

On the partial wind up of a pension plan, the PBA provides several options for the payment of pension benefits to members, former members, retired members and other persons who are entitled to receive benefits from the pension plan as a result of the partial wind up.

Members and former members included in the partial wind up may choose:

1. **Transfer Options**

   Section 73(2) of the PBA, which is incorporated by reference into section 77.7 of the PBA, states that a person entitled to a pension benefit on the wind up, other than a person who is receiving a pension, is entitled to the transfer rights under section 42(1) of the PBA. The transfer rights under section 42(1) apply on individual termination of employment and plan membership.

   The transfer rights under section 42(1) of the PBA entitle a member or former member to require the administrator to pay an amount equal to the commuted value of the deferred pension to one of the following:

   a) pension fund related to another pension plan, if the administrator of the other pension plan agrees to accept the payment;
   b) a prescribed retirement savings arrangement; or
   c) for the purchase of a life annuity from an insurance company for the member or former member, if the plan allows it.

   The transfer rights under section 42(1) are not available on individual termination to those persons who are eligible under the plan for payment of an immediate pension, unless the plan provides for such an entitlement. However, subsection 73(2) of the PBA states that these transfer rights are available to those persons who are eligible under the plan for payment of an immediate pension on wind up of the pension plan.

   If a person is required to make an election under section 73(2), but does not do so within the prescribed period of time (i.e., within 90 days after receipt of the statement from the administrator that sets out his or her entitlements under the plan, the options available to him or her, and additional information prescribed by section 28(2) of the Regulation) or such longer period as the administrator may allow, the person shall be deemed to have elected to receive an immediate payment of a pension benefit, if he or she is eligible. Or, if the person is not eligible to receive an immediate payment of a pension benefit, he or she is deemed to have elected to receive a deferred pension.

2. **To receive an immediate or deferred pension, if the member has not elected a transfer option.**

   Where members elect or are deemed to have elected immediate and deferred pensions, the administrator is not required to purchase life annuities in order to distribute the plan's assets in connection with the partial wind up (see section 77.7(2) of the PBA).

   If the administrator decides not to purchase life annuities, the administrator must comply with such requirements as may be prescribed in connection with the distribution of the pension fund's assets relating to the partial wind up (See section 77.7(3) of the PBA). The administrator may offer these immediate or deferred pensions through the ongoing plan, if the plan has the capacity to accept the liabilities with respect to the affected members, former members and retired members, and to continue to provide their benefits. (See the decision of the Financial Services Tribunal in *Imperial Oil Limited v. Superintendent of Financial Services et al*. (December 2, 2009)).The administrator may transfer the assets of those persons who have not elected a transfer option back to the ongoing plan. Refer to policy W100-233 (Distribution of Benefits on Partial Wind Up Where Immediate or Deferred Pensions are Not Purchased) for additional information that an administrator should provide members in situations where life annuities were not purchased.

If the administrator purchases life annuities, the pensions will be paid by the insurance company from which the life annuities were purchased.

Not all members, former members or retired members will have the options set out above paragraph 1 or 2. The PBA permits a plan to require the lump sum commutation of the pension in cash where the former member or retired member is entitled to a “small pension”. Specifically, a former member or retired member may receive payment of the commuted value of a benefit if the plan requires it and the annual benefit payable at the normal retirement date is not more than 4 per cent of the Year’s Maximum Pensionable Earnings (YMPE) in the year that the former or retired member terminated employment, or if the commuted value of the benefit is less than 20 per cent of the YMPE in the year he or she terminated employment. (See section 50(1) of the PBA)

Similarly, the PBA permits a plan to require for payment, upon the death of a retired member, the commuted value of the survivor benefit to a person who is entitled to the survivor benefit if, at the date of death, the benefit payable is small. Specifically, a person entitled to a survivor benefit may receive payment of the commuted value of the survivor benefit, if the plan requires it and at the date of death of the retired member the annual benefit payable is not more than 4 per cent of the YMPE, or the commuted value of the benefit is less than 20 per cent of the YMPE. (See section 44(7) of the PBA)

Additional payments:

A member, former member or retired member may also be entitled to receive additional lump sum payments from the pension fund in the following situations:

1. Where his or her post-1986 contributions plus interest exceed 50 per cent of the commuted value of his or her deferred pension or pension, he or she is entitled to a lump sum payment of the excess amount. (See section 39(4) of the PBA)

2. Where a plan permits a member to make additional voluntary contributions to the plan and the member has done so, he or she is entitled to a refund of additional voluntary contributions, plus interest from the date the contributions were made. (See section 63(2) of the PBA)

Provision of Individual Statements

Under section 77.6 of the PBA, which incorporates section 72 of the PBA by reference, the administrator must give each person affected by the partial wind up and entitled to a pension, deferred pension or other benefit or to a refund in respect of the plan, a statement setting out the person’s entitlement under the plan, the options available to the person and such other information as is prescribed in section 28(2) of the Regulation.

In respect of members, former members, retired members and other persons for whom the administrator has purchased, or intends to purchase a life annuity from an insurance company, the statement should also include the contact information of the insurance company from which the annuity will be purchased and the contact information of the individual at the insurance company to whom the member, former member, retired member or other person may direct any inquiries relating to the annuity. If this contact information is not available when the statement is issued, the statement should indicate when and how the information will be provided.

The statement that the administrator is required to give under section 77.6 of the PBA must be given within 60 days after the administrator receives notice that the Superintendent of Financial Services (Superintendent) has approved the wind up report. Where the Superintendent has approved the payment of benefits under section 70(3) of the PBA, the statement must be given to the persons affected by the approval within 60 days after the administrator receives notice of the section 70(3) approval.

Distribution of Benefits

The timing of distribution of benefits relating to a partial wind up depends on whether the plan is in a surplus or a deficit position at the effective date of the partial wind up. If the plan is fully funded, or has a surplus at the effective date of the partial wind up, the administrator is required to make payment in accordance with the election (or deemed election) within 60 days after the later of the:

- day that the election is received from the person who is entitled to a pension, deferred pension or other benefit or to a refund in respect of the pension plan, or if no election is made, the day on which the person is deemed to have made the election; and
- day the administrator receives notice that the Superintendent has approved the wind up report.

However, if the Superintendent approves the payment of benefits under section 70(3), the payment must be made within 60 days after the later of the:

- day that the election by the person affected by the approval is received, or, if no election is made, the day on which the person is deemed to have made the election; and
- day the administrator receives notice of the section 70(3) approval.

The provision of benefits must be completed before or concurrently with the distribution of any surplus remaining in the wound up portion of the pension plan.

Where the plan has a wind up deficiency and additional funding is required under section 75 of the PBA (which is incorporated by reference into section 77.8 of the PBA), sections 29(7) and 29(8) of the Regulation may restrict the amounts paid from the plan. For example, section 29(8) provides that if the benefits being funded under section 75 of the PBA are not guaranteed under the Pension Benefits Guarantee Fund (section 84 of the PBA), none of the funds of the plan shall be used to purchase a life annuity, until a report is filed under section 32 of the Regulation certifying that there is no further amount to be funded (i.e., the required funding under section 75 of the PBA has been made). Similarly, the transfer of the assets and liabilities relating to the immediate and deferred pensions to the on-going portion of the pension plan can only take place once the requirements of section 75 of the PBA have been satisfied.

Where the persons entitled to an immediate or deferred pension under the plan have not elected a transfer option under section 73(2) of the PBA and the plan administrator has chosen **not** to purchase life annuities for the immediate and deferred pensions of the wound up portion of the pension plan, the transfer of the assets and liabilities in respect of these pensions to the on-going portion of the pension plan shall not proceed until all section 75 funding requirements have been satisfied. See also policies W100-102 (Filing Requirements and Procedure on Full or Partial Wind Up of a Pension Plan) and W100-441 (Restrictions on Payments in Deficit Situations).

The split, either notional or actual, between the wound up and on-going portions of the pension plan must be maintained until all assets of the wound up portion are distributed.