



SECTION: Superintendent of Financial Services

INDEX NUMBER: S850-200

TITLE: Filing Applications with the Superintendent of Financial Services
- PBA ss. 63(7) & (8), 78, 79, 83, 88, 89, as amended
- Regulation 909 s. 34(7)

APPROVED BY: The Superintendent of Financial Services

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Introduction

The *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (“FSCO Act”), which was fully proclaimed on July 1, 1998, amends the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 (“PBA”). The FSCO Act replaces the Pension Commission of Ontario (“PCO”) with the Financial Services Commission of Ontario (“FSCO”). The FSCO Act also establishes the Superintendent of Financial Services (“Superintendent”) in place of the Superintendent of Pensions.

The FSCO Act makes several important amendments to the PBA in relation to certain applications. This policy outlines the general procedure for filing six types of applications with the Superintendent under the PBA. It concerns only those applications that were decided by the Pension Commission in the first instance before the full proclamation of the FSCO Act.

Note: While this policy is meant to be a guideline, the Superintendent is not bound by it. Furthermore, the Superintendent is not bound by information or advice given by FSCO staff. This policy does not alter any of the requirements of the FSCO Act, PBA or Regulation 909, R.R.O. 1990 (“Regulation”). Where this policy conflicts with the FSCO Act, PBA or Regulation, the FSCO Act, PBA or Regulation govern.

Status of Applications before the PCO prior to July 1, 1998

- 1 Subsection 213(2) of the FSCO Act provides that the Pension Commission, as it existed prior to July 1, 1998, “shall continue to exist for the sole purpose of concluding and disposing of hearings and proceedings that, before the day this section comes into force, were commenced before the Commission but not concluded.” Applicants should refer to policy P520-784 (“Continuation of Proceedings for Certain Applications Under the Current PBA once the *Financial Services Commission of Ontario Act, 1997* comes into Force”).

Status of existing PCO policies

- 2 Over the years, the PCO has published policies that address these six types of applications. Although the FSCO Act changes decision-making processes, the compliance requirements for the applications have not changed. An applicant must satisfy the Superintendent that the application complies with the PBA and Regulation. The applicant should also demonstrate compliance with the relevant policies published by the former PCO and FSCO.
- 3 All references to “Pension Commission of Ontario” or “Superintendent of Pensions” in the policies that address these six types of applications should now be read as “Superintendent of Financial Services.” Applicants should refer to policy S850-001 (“General Announcement: The Status of Published PCO Policies under FSCO”)
- 4 Policies published from 1996 onwards are available on the Telix (BBS) system. The policies will soon be available on the FSCO website. The Internet address is <<http://www.fSCO.gov.on.ca>>.

Applications to the Superintendent

In this part, all section numbers refer to the PBA unless otherwise noted.

- 5 **For the following applications, the Superintendent has the authority to propose (i) to consent or refuse to consent or (ii) to make an order or refuse to make an order, by serving a notice of proposal:**
 - a) Application by an employer for consent to pay it the amount it overpaid into the pension fund or an amount it paid that should have been paid out of the pension fund.....ss. 78(4), 89(3.2)
 - b) Application by an employer for consent to pay it surplus from a continuing or wound-up plan.....ss. 78, 79, 89(3.1)
 - c) Application for an order declaring that the PBGF applies to a pension plan ss. 83, 89(2)(d.1)
 - d) Application for an order requiring the administrator to take action respecting a report.....ss. 88, 89(2)(f)
- 6 The Superintendent’s proposed decision will be served on the applicant and any other person, as provided in the PBA, by way of a notice of proposal with written reasons.
- 7 A person on whom the notice of proposal is served is entitled to a hearing before the Financial Services Tribunal (“Tribunal”) under s. 89(6) if the person delivers to the Tribunal written notice requiring a hearing within 30 days after being served with the notice of proposal.
- 8 **The Superintendent has the authority to consent to the following applications without serving a notice of proposal, if the consent is not subject to terms or conditions:**
 - a) Application to refund member or former member contributions.....ss. 63(7) & (8)
 - b) Application for an allocation from the PBGF.....s. 34(7) of the RegulationThese decisions will be communicated to the applicant, along with written reasons.
- 9 If the Superintendent proposes i) to refuse to consent; or ii) to attach terms or conditions to a decision described in paragraph 8, above, the Superintendent will serve a notice of proposal, as required by s. 89(4), which will include written reasons.
- 10 The notice of proposal will be served on the applicant and any other person, as provided in the PBA.

- 11 A person on whom the notice of proposal is served is entitled to a hearing before the Tribunal under s. 89(6) if the person delivers to the Tribunal written notice requiring a hearing within 30 days after being served with the notice of proposal.

Principles of the Decision-Making Process

- 12 The Superintendent's decisions or proposed decisions will comply with the PBA and Regulation.
- 13 The following principles will guide the Superintendent's decision-making:

a) It will be effective and efficient.

It will include appropriate time frames.

b) It will be fair and equitable.

Decisions will be made on an impartial basis by the Superintendent or a delegate. Applicants should refer to policy S850-100 ("Delegation of the Superintendent's Authorities").

c) It will display integrity.

Decisions will be based on an objective and consistent application of the legislation.

d) It will be open and transparent.

The application process, the decision-maker and the time frames for decisions will be published.

The Application Process

General:

- 14 a) The onus is on the applicant to satisfy the Superintendent that an application complies with the requirements of the PBA and Regulation. The applicant should also demonstrate compliance with the relevant policies. It is the applicant's responsibility to consider whether plan-specific circumstances warrant the inclusion of additional information or documentation supporting the application.
- b) The applicant is required to provide notice to members, former members or other persons as required by the PBA, Regulation and policies. The applicant should also provide notice to the collective bargaining agent(s) that represents the members, former members or other persons affected by the application. The onus is on the applicant to satisfy the Superintendent that full and fair notice has been given.
- 15 The format required for various applications, as described in existing policies, remains unchanged. Applicants should refer to the relevant policies for assistance.

Required Documents and Acknowledgment of Receipt:

- 16 Applicants must file seven (7) copies of the application and any supporting materials.
- 17 The application, including attachments, should be submitted on 8-1/2" by 11" paper (subject to legibility).

18 These applications should be sent by first class mail or delivered to

Superintendent of Financial Services
Financial Services Commission of Ontario
5160 Yonge Street, 4th Floor
Toronto, ON M2N 6L9

19 Upon receipt, the application will be acknowledged.

Written Representations

20 Upon receipt, a written representation made by any person will be acknowledged.

Staff Review

21 Technical and professional support ensures quality control:

These applications will be reviewed by a Pension Officer or Insolvency Coordinator in the Pension Plans Branch (“pension staff”), with appropriate technical and professional support.

22 Pension staff reviews application for completeness:

a) If pension staff believe that an application is incomplete, they will advise the applicant in writing. The applicant must submit seven (7) copies of the documentation required to complete the application.

b) The review of the application will not proceed until the earlier of the date when:

(i) pension staff receive all of the information requested;

(ii) the applicant submits a written request asking that the application proceed as is (i.e., without submitting the additional information staff have requested); or

(iii) the time period for a response, as set out in the letter from pension staff, expires.

23 Pension staff review of the application for compliance:

a) Pension staff will review the application and any supporting documentation for compliance with the PBA and Regulation.

b) If any compliance concerns are identified by staff, the applicant and any person who has made written representations will receive a letter outlining the concerns.

c) The letter will specify the time period which the applicant and any other person have to provide a written response, if they wish to have the response considered in the decision-making. Seven (7) copies of the written response must be submitted to the Superintendent.

Consideration by the Superintendent

- 24 a) Following a review of the application and all related materials, the Superintendent will issue a proposed or final decision, as provided in the PBA.
- b) All decisions, proposed or final, with reasons will be communicated to the applicant and any other person, as provided in the PBA.

Time Line

- 25 The decision or notice of the proposed decision will be issued within 90 days after:
- (i) a complete application is received; or
 - (ii) the applicant submits a written request asking that the application proceed as is,
- provided that the applicant complies with the time frames, as specified in pension staff's correspondence.

Hearings in respect of a proposed decision of the Superintendent

- 26 A proposed decision is subject to a hearing before the Tribunal if a person on whom the notice of proposal is served asks the Tribunal for a hearing within 30 days after being served with the notice of proposal (PBA, s. 89(6)).

Finalization of the Proposed Decision

- 27 If no notice requiring a hearing is received within the specified time frame, the Superintendent may carry out the proposed decision.