



SECTION:	Wind Up
INDEX NO.:	W100-108
TITLE:	Allocation of Assets in a Multi-Jurisdictional Pension Plan Providing Defined Benefits Guaranteed in Whole or in Part by the Pension Benefits Guarantee Fund - PBA s. 70 - Regulation 909 s. 30 and 35
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO website (April 2008)
EFFECTIVE DATE:	April 1, 2008 [No longer applicable – replaced by W100-109 – September 2013]

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 allocation of assets among jurisdictions on the full or partial wind up of a multi-jurisdictional pension plan that provides defined benefits guaranteed in whole or in part by the Pension Benefits Guarantee Fund (PBGF), taking into consideration amendments to section 30 of the Regulation that were made on December 18, 2006. A multi-jurisdictional pension plan provides pension benefits in respect of Ontario employment and pension benefits in respect of employment in one or more of the designated provinces, employment covered by the federal *Pension Benefits Standards Act* or employment in other jurisdictions. Where the pension plan includes members with pension benefits related to employment in more than one jurisdiction, the assets and liabilities relating to each jurisdiction must be identified.

The policy incorporates information provided in response to stakeholder questions and places it within the larger context of the asset allocation process. In addition, the policy clarifies the application of the changes to section 30 of the Regulation and explains how these changes are being administered by FSCO.

Unless specifically noted otherwise, use of the term “wind up” in this policy refers to both full and partial wind up of a pension plan.

Amendments to Section 30 of the Regulation

Section 30 of the Regulation was amended to apply on the wind up or partial wind up of all multi-jurisdictional pension plans that provide defined benefits guaranteed in whole or in part by the PBGF, and not just those in a deficit funding position. In addition, the liability for any benefit enhancements resulting from the application of section 74 of the PBA, the grow-in rules, must be included in the liabilities when they are allocated among the various jurisdictions. Amendments to section 30 of the Regulation came into effect on December 18, 2006 and apply to wind up reports filed with the Financial Services Commission of Ontario on or after that date.

Overview of Applicable Sections of the Legislation and Regulation

The provisions of section 70 of the PBA and sections 30 and 35 of the Regulation provide a framework for allocating assets among jurisdictions on the wind up of a pension plan that provides defined benefits guaranteed in whole or in part by the PBGF.

Section 70 of the PBA sets out specific requirements that the administrator must follow on wind up or partial wind up of a pension plan. These requirements include:

- The filing of a wind up report and the elements that must be included in the report - Section 70(1).
- Limits on payments out of the pension fund, or the portion of the pension fund related to the partial wind up, prior to the approval of the wind up report by Superintendent of Financial Services (Superintendent) - Sections 70(2) to 70(4).
- The authority of the Superintendent to refuse to approve a wind up report that does not meet the requirements of the PBA and the Regulation or that does not protect the interests of the members and former members of the pension plan - Section 70(5).
- On partial wind up of a pension plan, members, former members and other persons entitled to benefits under the pension plan have the rights and benefits that are not less than the rights and benefits they would have on a full wind up of the pension plan on the effective date of the partial wind up. - Section 70(6)

Section 30 of the Regulation sets out the methodology for the determination of liabilities and allocation of assets on the wind up of a pension plan that provides defined benefits guaranteed in whole or in part by the PBGF.

Section 35 of the Regulation confirms the application of the process set out in section 30 to a partial wind up, and sets out the funding requirements in respect of any deficit on partial wind up.

Application of the Section 30 Amendments to Specific Wind Up Reports

In preparing a wind up report on the full or partial wind up of a pension plan that provides defined benefits guaranteed in whole or in part by the PBGF, the application of section 30 of the Regulation as it read before December 18, 2006 or as it reads on and after December 18, 2006 is determined by the filing date of the initial wind up report. This filing date will determine whether the benefit enhancements resulting from the application of section 74 of the PBA are excluded or included in the asset and liability allocation methodology and whether the requirements of section 30 are applicable where the plan is in a surplus position.

Where the initial wind up report was filed before December 18, 2006, the requirements of section 30 of the Regulation, as it read prior to the December 18, 2006 amendment, apply to pension plans in a deficit position. In determining the liability and asset allocation, benefit enhancements resulting from the application of section 74 of the PBA are not included in the liabilities. In the situation where a wind up report was filed before December 18, 2006 and a revision, addendum or supplement is to be filed after December 18, 2006, the provisions of section 30 of the Regulation as they read before December 18, 2006 apply to the initial report and continue to apply to the subsequent report updates. For example: A partial wind up report was filed in November 2005. In February 2008, a supplemental report was filed. In this fact situation, the asset and liability allocation in the supplemental report is governed by the pre-December 18, 2006 requirements of section 30 of the Regulation, as the initial report was filed in 2005.

Where the initial wind up report was filed on or after December 18, 2006, the requirements of section 30 of the Regulation, as it reads on and after December 18, 2006, apply to pension plans in surplus and in deficit positions. In determining the liability and asset allocation, benefit enhancements resulting from the application of section 74 of the PBA are included in the liabilities.

Asset Allocation Process

The identification of assets and liabilities by jurisdiction facilitates compliance with any variations in the wind up requirements of the jurisdictions involved. Once the assets are allocated, the wind up of the portion of the pension plan as it relates to a jurisdiction shall be dealt with in accordance with the legislation of that jurisdiction.

Sections 30 and 35 of the Regulation provide specific information on the determination of the liabilities and assets included in the wind up report required under section 70 of the PBA, including:

1. Additional Voluntary Contributions - Section 30(2)(a) of the Regulation

The value of any additional voluntary contributions plus interest must be determined and provision made for their immediate payment from the pension fund to the appropriate members

2. Liabilities - Sections 30(2)(b) and (c) of the Regulation

For the purpose of section 30 of the Regulation, the liabilities for the commuted value of all benefits in respect of each member, former member and other person entitled to benefits under the pension plan **include**:

- accrued benefits for members not yet vested under the terms of the pension plan,
- escalated adjustments that have been made before the effective date of the wind up,
- plant closure benefits payable on plan wind up,
- permanent layoff benefits payable on plan wind up,
- funded consent benefits,
- for initial wind up reports filed on and after December 18, 2006, any benefit enhancements resulting from the application of section 74 of the PBA, and
- funded special allowances.

The liabilities **do not include**:

- the value of any additional voluntary contributions with interest as noted above,
- any escalated adjustments that have not been made as of the effective date of the wind up,
- any prospective benefit increases,
- any benefits provided under a guaranteed annuity contract or a contract issued under the *Government Annuities Act* (Canada) if the contract was issued before January 1, 1988, and
- for initial wind up reports filed before December 18, 2006, any benefit enhancements resulting from the application of section 74 of the PBA.

The liabilities in respect of each member or former member shall not be less than the minimum value of the required contributions made by the member or former member.

3. Allocating **Liabilities** Among Jurisdictions – Section 30(2)(d) of the Regulation

Once the liabilities are determined in accordance with section 30(2)(b) and (c) of the Regulation, as described in paragraph 2 above, these liabilities are allocated among the following three distinct groups:

- liabilities in respect of employment in Ontario,
- liabilities in respect of employment in each designated province and employment for which benefits were provided that are governed by the *Pension Benefits Standards Act*, and
- liabilities in respect of all other employment for which pension benefits were provided.

4. Allocating **Assets** Among Jurisdictions – Section 30(2)(e) of the Regulation

The allocation of solvency assets, as defined in Part I of the Regulation, among jurisdictions first removes the value of additional voluntary contributions, if any, from the solvency assets. The remaining assets are then allocated among the different categories of employment in proportion to the liability allocations determined under section 30(2)(d) of the Regulation.

Allocating Assets on Partial Wind Up

Section 35(1) of the Regulation directs that a wind up report in respect of a partial wind up of a pension plan be prepared in accordance with the requirements of section 30. The process for allocating the assets and liabilities for a partial wind up would start with the four steps set out above for the allocation of the assets of the entire plan, as if the plan were fully wound up. Once the assets have been allocated among the jurisdictions, the split of the assets allocated to each jurisdiction between the members affected by the partial wind up and the non affected members takes place. The laws of each jurisdiction apply to the assets allocated to that jurisdiction. Guidance on the splitting of assets related to Ontario employment between affected members and non-affected members with Ontario employment is set out in policy W100-102 Filing Requirements and Procedure on Full or Partial Wind Up of a Pension Plan.

While section 35(1) applies specifically to a partial wind up where the assets allocated to the wind up are not sufficient to pay all of the liabilities in the partial wind up, the section 30 methodology provides an appropriate and supportable process to follow for all partial wind ups of multi-jurisdictional pension plans with defined benefits guaranteed in whole or in part by the PBGF, regardless of their funded status at the date of partial wind up.

Other situations requiring asset allocation among jurisdictions

For pension plans that would be covered by section 30 of the Regulation in the event of a wind up, the methodology set out in section 30 may provide a reasonable method of allocating assets among the jurisdictions in other situations requiring such an allocation.