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SECTION:	Wind Up
INDEX NO.:	W100-231
TITLE:	Distribution of Benefits on Partial Wind Up - PBA s. 72(1) and 73(2) - Regulation 909 s. 28(2)
APPROVED BY:	Superintendent of Financial Services
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REPLACES:	W100-230

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This policy replaces W100-230 (“Individual Statement at 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.*

This policy addresses the distribution of the benefits provided under the terms of the pension plan on partial wind up. In this policy, the term “benefits” does not include any benefits arising from the distribution of surplus on partial wind up. On full wind up of a pension plan, all assets of the pension plan must be distributed. Similarly, on partial wind up, the administrator must distribute all assets in the wound up portion of the pension plan.

The distribution of surplus on partial wind up is addressed in 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”).

### **Options for Receipt of Benefits**

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

Active members included in the partial wind up may elect to:

- Transfer the commuted value of the pension benefit, as provided in section 73(2) of the PBA;
- Receive the lump sum cash payment under any of sections 39(4), 50, 63(2), 63(3) and 63(4) of the PBA, subject to the terms of the pension plan; or
- Receive an immediate or deferred pension.

Former members and other persons who are included in the partial wind up and are not in receipt of pension payments on the partial wind up date continue to be entitled to a deferred pension commencing at the normal retirement date, or such earlier date as provided under the terms of the pension plan, PBA and Regulation. In addition, section 73(2) of the PBA provides that such persons are entitled to the transfer rights under section 42(1) and that section 42(3) does not apply to limit these transfer rights.

Generally, all persons included in the partial wind up who are in receipt of a pension will continue to receive their pension on the same basis as before the partial wind up. The pension amount may be adjusted at the completion of the partial wind up process, such as where the terms of a multi-employer pension plan permit the reduction of benefits, or where an employer declares bankruptcy and the partial windup has not been fully funded.

If a member who is entitled to make an election does not do so within the prescribed time, or such longer period as the administrator may allow, the member shall be deemed to have elected a deferred or immediate pension.

All immediate and deferred pensions in the wound up portion of the pension plan must be provided through the purchase of life annuities from an insurance company licensed in Canada to provide such annuities.

### **Provision of Individual Statements**

The administrator of the pension plan must prepare individual statements, as required by section 72(1) of the PBA. The statements must set out the entitlements and the options available to each member, former member and other person who is entitled to receive benefits or a refund from the pension plan as a result of the partial wind up.

The statements required under section 72(1) of the PBA must contain the information specified in section 28(2) of the Regulation. In respect of former members and other persons who are currently in receipt of or will be receiving a pension, the statement should include full information on the insurance company from which the annuity has been or will be purchased, as well as the name of a contact person there. Where this contact information is not available at the time that the statement is issued, the statement should indicate when and how the information will be provided.

The statements required under section 72(1) of the PBA must be given to the persons who are entitled to receive payment from the pension plan as a result of the partial wind up 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 payment of benefits under section 70(3) of the PBA, the statements 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**

Once the Superintendent has approved the wind up report, the distribution of benefits by transfer, cash payment or annuity purchase, as elected by all persons entitled to benefit payments under the wound up portion of the pension plan, should proceed as quickly as possible.

Where the wound up portion of the pension plan is in a deficit position that requires additional funding under section 75 of the PBA, sections 29(7) and 29(8) of the Regulation may place limits on the distribution of benefits from the pension plan. See also policy W100-440 (“Restrictions on Payments in Deficit Situations”).

Where the wound up portion of the pension plan is in a surplus position, provision of benefits must be completed before or concurrently with the distribution of surplus from the wound up portion of the pension plan.

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. When that asset distribution is completed, only the on-going portion of the pension plan will remain.