



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

SECTION: Wind Up

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TITLE: A Guide To The Wind Up Of A Pension Plan
- PBA, 1987, s. 14, s. 37-38, s. 40-43, s. 45, s. 69, ss. 71(1), s. 73-76, s. 78, s. 82,*
O. Reg. 708/87 s. 12, s. 21, s. 24-26, s. 31, s. 35, s. 40, s. 42, s. 44

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A Guide to the Wind Up of a Pension Plan

This guideline assists the Administrator in winding up a pension plan and addresses related issues leading to the Superintendent's approval of the wind-up report. These include making a notice of proposal to wind up and preparing the wind-up report including all necessary documentation. This guideline does not address plan amendments, surplus matters or situation involving application of the Pension Benefits Guarantee Fund. Surplus issues will be addressed in future Compliance Assistance Guidelines.

The process of plan wind up cannot be set out here for every plan situation. Every wind up of a pension plan is as individual as the plan itself. The complexity of the wind up is determined largely by the business circumstances at the time of the wind up, the provisions of the plan text, whether the plan is and has been administered in compliance with the *Pension Benefits Act*, 1987 (the "PBA") and Regulation, and whether plan documents are clear with respect to issues such as surplus entitlement.

Our approach is to highlight key stages, requirements and procedures common to all pension plan wind ups. The objectives are to guide Administrators through the highly technical wind-up process and to facilitate regulatory processing internally. Administrators may find it necessary to consult with a pension professional for clarification of specific issues. These objectives are in the interest of servicing our clients as efficiently as possible and utilizing staff time and other PCO resources in more positive and constructive activities.

Specific topics to be addressed:

- C preparing a notice of proposal to wind up a pension plan;
- C effective date of wind up;
- C identification of those included in the wind-up;
- C wind-up documentation;
- C the wind-up report;
- C receipt of outstanding Annual Information Returns ("AIRs");
- C compliance with other jurisdictions; and
- C approval by the Superintendent.

Preparing a Notice of Proposal to Wind Up a Pension Plan

An employer who intends to wind up the pension plan in whole or in part must give written notice as required under section 69 of the PBA, 1987 to the Superintendent, active members, former members, the trade union, the advisory committee and any other person entitled to a payment from the pension fund. The notice must contain the information prescribed in subsection 24(1) of the Regulation.

It is helpful to PCO staff responsible for wind up processing to be notified as soon as possible of the employer's intention to wind up in order to assure that legislative requirements will be met. As a minimum, PCO staff should receive the following:

- C a copy of the wind-up notice;
- C the date the notice was distributed;
- C details concerning who received notice; and
- C any other material concerning the proposed wind up.

In the event an employer declares bankruptcy or is placed in receivership, or is otherwise ceasing operations, PCO staff should be notified immediately.

Effective Date of the Wind Up

Different requirements apply in separate cases:

- C an employer who continues in business -
the effective date of wind up **may not be earlier than the date notice of the wind up was given to members.**
- C contributory plans -
the effective date of wind up **may not be earlier than the date on which member contributions ceased to be deducted.**
- C where wind up results from a specific event such as plant closure, bankruptcy or purchase and sale -
the effective date of wind up **may not be earlier than the date of the specific event precipitating wind up.**

The Superintendent may change the effective date of the wind up by order, if in the Superintendent's view, there are reasonable grounds for such a change as provided in the legislation under subsection 69(6).

Identification of Those Who Must be Included for Purposes of the Wind Up

When a pension plan is being wound up, all former members and other certain persons entitled to payments from the plan on the effective date of the wind up, in addition to all active members, must be included in the wind-up report and provision made for the disbursement of all assets.

In circumstances where a plan is partially winding up for a portion of the active members, PCO staff will not normally require that former members and other certain persons entitled to payments from the fund be included for purposes of the partial wind up.

When a wind up results from an event affecting the employment of the members, such as in the case of a plant closure, it is

the Commission's practice to require that all members affected by the event who are participating in the plan on or after the date notice of the event is released must be included as members for the purposes of the wind up. This applies even if a member terminates after the notice date but prior to the event actually occurring.

Wind Up Documentation

In addition to the Notice of Proposal to Wind Up, the following documentation must be filed on plan wind up:

Wind-Up Report

The Administrator must file a wind-up report pursuant to subsection 71(1) of the PBA, 1987. Only persons authorized under section 12 and subsection 25(1) of the Regulation can prepare the contents of the wind-up report. The Administrator is required to file the wind up report within six months following the effective date of the wind up of the pension plan in whole or in part as stated under subsection 25(3) of the Regulation.

Amendments/Resolutions

Appropriate amendments/resolutions effecting the wind up, benefit improvements, new options, etc. should be submitted together with the wind-up report so that the proposals in the wind-up report conform with the provisions of the plan.

Annual Information Returns

The Administrator must ensure that all AIRs required up to the effective date of wind up are filed. All prescribed and outstanding fees and assessments must be paid. The Administrator must comply with this requirement within three months after the effective date of wind up as stated under subsection 25(4) of the Regulation.

The Wind-Up Report

Specific items to be included in the wind-up report are set out under subsection 71(1) of the PBA, 1987]:

- C the assets and liabilities of the pension plan;
- C the benefits to be provided under the pension plan to members, former members and other certain persons;
- C the methods of allocating and distributing the assets of the pension plan and determining the priorities for payment of benefits; and
- C such other information as is prescribed.

Although no specific information is prescribed for the purposes of subsection 71(1) of the PBA, 1987. PCO staff will look for other items in the wind-up report including for instance:

- C employee data;
- C the commutation assumptions; and
- C the proposal for funding a deficit.

Assets and Liabilities of the Pension Plan

Pension plan assets must be based on market value. As a matter of administrative practice with respect to liabilities, either the CIA minimum transfer value or cost to purchase the benefit from an insurance company are acceptable basis for commutation of a deferred pension or ancillary benefit as of the effective date of the wind up.

In the case of the wind up of a defined contribution plan, certification as to the surplus or deficit position forms an acceptable

balance sheet.

Employee Data

Plan information must be sufficient to track the members and confirm consistency with previous membership information filed such as prior AIRs and actuarial reports. More detailed data on age and service demographics may be required by PCO staff when reviewing the appropriateness of the commutation assumptions.

Compliance Items

The wind-up report should certify that at least the following legislative requirements, as applicable, have been met:

C	full vesting	clause 74(1)(b)
C	transfer options	subsections 74(2) & 43(1)
C	"grow-in" rights	section 75
C	50% rule, post 1986 benefits	subsections 40(3) & (4)
C	pre 1987 - minimum employee contributions plus interest	subsections 40(1) & (2)
C	locking-in applied on benefits and options vested under PBA, 1987	sections 37 & 38 elected under section 75
C	minimum interest to be paid from wind up to pay out	Reg. subsection 21(11)

Allocation and Distribution of Assets

In the case of a partial plan wind up, the members, former members and other certain persons have no less than the rights and benefits they would have on a full wind up. This requirement is set out under subsection 71(6) of the PBA, 1987.

To satisfy this legislative requirement, the assets must be allocated between the continuing pension plan and the part of the plan that is winding up. This can be achieved in relation to the liabilities on a proportionate basis: on either an ongoing or wind-up basis as appropriate in the circumstances. If the actuary uses another basis then comments supporting the appropriateness of the basis selected should be included in the wind-up report.

The assets allocated to the part of the plan that is winding up must be distributed as they would be on a full plan wind up.

In the case of a wind up covering members in more than one jurisdiction and involving a deficit, the method for allocating assets between the jurisdictions is set out under section 26 of the Regulation. In a similar case involving surplus, the surplus must be allocated between the jurisdictions and dealt with in accordance with the requirements of each jurisdiction.

Proposal for Treatment of Surplus

In the PBA, 1987, "wind up" and "partial wind up" are defined to include the distribution of assets. Therefore, the Administrator should disclose intentions with respect to the proposed handling of surplus.

Proposal for Funding of a Deficit

If the employer funds the deficit immediately, the wind up report may proceed as if there is not a deficit or surplus. However, before approval can be given, a commitment from the employer must be obtained to fund on a lump sum basis by a certain date.

If the employer proposes to fund the deficit over a period of time, the following considerations must be addressed:

- | | | |
|---|--|---------------------------------------|
| C | liability of the employer | section 76 &
Reg. subsection 31(2) |
| C | maximum 5 years to fund | Reg. section 27 & 31(3) |
| C | benefit reductions are permissible for plan non-vested members when funding under PBA, 1987 section 76 | Reg. clause 25(9)(a) |
| C | restrictions on cash out, transfers and annuity & (8) purchases prior to fully funding | Reg. subsections 25(7) |

In certain cases, such as:

- C multi-employer pension plans (MEPPs);
- C negotiated defined benefit/defined contribution plans; and
- C defined benefit plans covering significant shareholders,

the pension plan may be amended to reduce accrued benefits under subsections 14(2) and (3) of the PBA, 1987 and section 44 of the Regulation. In such a case, there will be no additional funding of benefits required. It should be noted, however, that an amendment to reduce benefits does not excuse an employer from making employer-required contributions to the date the amendment is filed. Administrators must ensure that funding is made in accordance with PBA, 1987 requirements.

In certain cases involving defined benefit plans where the employer is making payments in accordance with section 76 of the PBA, 1987, the pension benefits to which plan members may be entitled - but which had not vested under the terms of the plan - may be reduced to an amount proportionate to the level funded as set out under section 78 of the PBA, 1987 and clause 25(9)(a) of the Regulation.

In the case of insolvency or declaration of bankruptcy, and where there is no funding under section 76 of the PBA, 1987, all pension benefits may be reduced to the level at which they are funded according to section 78 of the PBA, 1987 and clause 25(9)(b) of the Regulation.

Other Matters

To facilitate processing of the wind up report several items must be confirmed or addressed as appropriate.

All Contributions Made to the Pension Fund

All contributions must be made up to the effective date of wind up in accordance with the terms of the plan and the most recent cost certificate filed with the PCO.

Successor Plan

If a successor plan has been established by the **same** employer, the original plan cannot be wound up. The legislation provides for this under section 82 of the PBA, 1987 and has been confirmed by the Pension Commission of Ontario judgement rendered on February 9, 1989 in the case of Otis Canada Inc.

This does not apply on the purchase and sale of a business, since the successor employer is not the same employer sponsoring the original pension plan.

Prior Plans and Policies Included in Wind Up Report

Prior plans and policies sponsored by the same employer are deemed to be benefits associated with the current plan whether or not the assets were consolidated as set out under subsection 82(3) of the PBA, 1987. To the extent these apply to members affected by the current wind up, such prior plans and policies must also be included for the purposes of the wind up.

PCO staff also review the wind-up material for the following items:

C	minimum interest on employee contributions to effective date of wind up	Reg. section 21
C	deemed consent	subsection 41(3) & 75(7)
C	early retirement rights	section 42
C	joint and survivor 60% option	section 45
C	confirmation that employee option forms will be provided	section 73
C	employee options and benefits consistent with PBA, 1987 and pension text.	

Receipt of Outstanding AIRs

Approval of benefit distribution may be delayed where AIRs are outstanding. The Administrator must comply with the requirement under subsection 25(4) of the Regulation to file all outstanding AIRs **within three months after the effective date of the wind up**. No surplus refund application may proceed to the Commission until all AIRs - including payment of all fees and assessment - have been filed.

Compliance with Other Jurisdictions

The benefits of affected members in another jurisdiction must be determined in accordance with the requirements of that jurisdiction.

Approval by the Superintendent

After the Notice of Proposal to Wind Up is given, no payments may be made out of the pension fund until the Superintendent approves the wind up report. This restriction does not apply to benefit payments which commenced prior to giving the Notice, a refund of employee contributions with interest to non-vested persons, or payments approved by the Superintendent pursuant to subsection 71(3) of the PBA, 1987.

When PCO staff are satisfied that the wind up complies with the PBA, 1987 they will recommend to the Superintendent approval of the wind-up report. On acceptance of the staff recommendation, a letter will be issued approving the wind-up report and distribution of assets.

It should be noted that the Superintendent's approval of the wind-up report does not provide for distributions requiring the prior consent of the Commission under the PBA, 1987. Examples of distributions requiring the prior consent of the Commission include refunds of surplus to employers, refunds of employee contributions where benefits are converted to a non-contributory basis, and refunds of employer overpayments.

In Summary

Often, the approval of a wind-up report is delayed as a result of incomplete or insufficient documentation which necessitates a time-consuming cycle of staff/client interactions. If, after reviewing this Guideline and consulting with pension professionals as circumstances warrant, Administrators still have questions, they should direct their enquiries to the appropriate Pension Plans Branch staff prior to filing wind up documentation.

This is the 4th in a series of Compliance Assistance Guidelines designed to assist Administrators in complying with the legislation and to ease administration.

Published Compliance Assistance Guidelines:

1. A Guide to Preparing an Application for Registration (Editor's Note: Effective only until May 1, 1994, Replaced by R500-201)
2. A Guide to Preparing An Annual Information Return (Editor's Note: Not effective, See Form 2 in the Supplement to Spring 1995 *PCO Bulletin*.)
3. A Guide to Preparing, Reviewing and Amending a Statement of Investment Policies and Goals ("SIP&G") (Editor's Note: See Policy Index No. S700-125 and the IPR Form in the Supplement to the Spring 1995 *PCO Bulletin*.)
4. A Guide to the Wind Up of a Pension Plan (Revised Version, December 1990) (Editor's Note: See also Policy Index No. W100-101)

Copies of the PBA, 1987 and the Regulation are available from Publications Ontario, 880 Bay Street, Toronto, Ontario. For mail order service, telephone (416) 326-5300 or call toll free in Ontario at 1-800-668-9938.

These Guidelines are published by: The Pension Commission of Ontario, 250 Yonge Street, 29th Floor, Toronto, Ontario M5B 2N7 416-314-5993 or fax 416-314-0650.

*PBA, 1987	PBA, 1990	PBA, 1987	PBA, 1990
s. 14,	s. 14	s. 69,	s. 68
s. 37-38,	s. 36-37	ss. 71 ,	s. 70
s. 40-43,	s. 39-42	s. 73-76,	s. 72-75
s. 45,	s. 44	s. 78,	s. 77
		s. 82,	s. 81

This material was revised by Policy No. W100-101 June 26, 1995.