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SECTION:	Wind Up
INDEX NO.:	W100-232
TITLE:	Distribution of Benefits on Partial Wind Up - PBA ss. 72(1) and 73(2) - Regulation 909 s. 28(2)
APPROVED BY:	Superintendent of Financial Services
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EFFECTIVE DATE:	September 30, 2010 [No longer applicable - replaced by W100-234 – May 2013]
REPLACES:	W100-231

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This policy replaces W100-231 (“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](http://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 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 related to 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. The transfer rights under section 42(1) entitle a member or former member with a deferred pension under the pension plan to transfer the commuted value of the deferred pension:
  - a) to a pension fund related to another pension plan, if the administrator of the other pension plan agrees to accept it;
  - b) into a prescribed retirement savings arrangement; or
  - c) for the purchase of a life annuity for the member or former member, through a life insurance company licensed in Canada; or
- Receive an immediate or deferred pension.

In addition, active members who are eligible will receive lump sum cash payments:

- Provided for under sections 39(4), 63(3) and 63(4) of the PBA; or
- Provided for under sections 50 and 63(2) of the PBA, if the terms of the pension plan provides for it.

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 persons entitled to a deferred pension but not in receipt of a pension are entitled to the transfer rights under section 42(1) and that section 42(3) does not apply to limit these transfer rights.

Members already in receipt of a pension and included in the partial wind up will continue to receive their pension from the plan if the administrator decides not to purchase annuities in respect of their benefits. If the administrator decides to purchase annuities for these individuals, their pension will be paid from the applicable insurance company.

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, if eligible, an immediate pension.

As a result of the December 2, 2009 Financial Services Tribunal decision respecting an Imperial Oil Limited pension plan, FSCO will no longer require administrators to purchase annuities for members affected by a partial wind up who are entitled to an immediate or a deferred pension. Instead, the administrator may transfer the assets relating to these pension benefits to the on-going portion of the pension plan. For more information regarding this, see policy [W100-233 – \(Distribution of Benefits on Partial Wind Up Where Immediate or Deferred Pensions are Not Purchased\)](#).

### **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 information specified in section 28(2) of the Regulation including 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.

In respect of former members and other persons for whom the administrator has purchased or intends to purchase an annuity from an insurance company licensed in Canada, the statement should also include information (name and address) of the insurance company from which the annuity has been or will be purchased, as well as the name and contact information 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.

Where the plan administrator chooses **not** to purchase annuities for the immediate and deferred pensions relating to the partial wind up, additional information and communication as described in policy W100-233 must be provided to members affected by the partial wind up.

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**

The timing of distribution of benefits relating to a partial wind up depends on whether the partial wind up is in a surplus or a deficit position.

Where the partial wind up is fully funded and the Superintendent has approved the partial wind up report, the plan administrator must make payment in accordance with the elections or deemed elections within 60 days after the later of the day in which the administrator receives the applicable person's election or deemed election; and the day on which the administrator receives notice that the Superintendent has approved the report. 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 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. For example, section 29(8) provides that a life annuity purchase cannot occur until the required funding under section 75 of the PBA has been made. Similarly, the transfer of the assets and liabilities in respect of the immediate and deferred pensions to the on-going portion of the pension plan can only take place once the requirements of section 75 have been met.

Where 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 proceed once all section 75 funding requirements have been met. See also policies [W100-102 \(Filing Requirements and Procedure on Full or Partial Wind Up of a Pension Plan\)](#) and [W100-440 \(Restrictions on Payments in Deficit Situations\)](#).

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.