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Wind Up

Archived Content

The following content is no longer accurate

It is provided for historical reference.

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Elimination of Partial Wind Ups Effective July 1, 2012 - Archived on July 6, 2016

Q1. Subsection 77.1(2) of the Pension Benefits Act (PBA) was introduced to eliminate partial wind ups effective July 1, 2012. What does this mean?

A1. This means that a pension plan can only be partially wound-up, if the effective date of the partial wind up is before July 1, 2012. This includes a partial wind up that was declared after July 1, 2012, but has an effective date before July 1, 2012. -06/12

Q2. What is grow-in?

A2. As of July 1, 2012, a pension plan member is entitled to grow-in to certain benefits (referred to as "grow-in benefits") if his or her pension plan provides defined benefits, and he or she ceases to be a member because his or her employment is terminated (subject to some limited exceptions) or the plan is wound up. This right entitles the eligible plan member to receive the pension beginning on the date on which the member would have been entitled to an enhanced or unreduced pension under the pension plan, if his or her employment or membership had continued to that date.

To be eligible for grow-in benefits:

- the member must be employed in Ontario at the time of wind up or termination of employment;
- the member's age plus years of continuous employment or membership in the plan at the effective date of wind up or the effective date of termination must equal at least fifty five (55); and

- the member must not be a member of a Jointly-Sponsored Pension Plan (JSPP) or a Multi-Employer Pension Plan (MEPP) that has opted out of providing grow-in benefits.

To be eligible to grow-in to bridging benefits under the plan the member must have at least ten years of continuous employment with the employer or have been a member of the plan for at least ten years.

Please note that the legislation limits the rights of a plan member who is a construction employee within the meaning of Ontario Regulation 285/01 made under the Employment Standards Act, 2000 to receive grow-in benefits.

Please also note that if a member is entitled to grow-in benefits, the dollar amount of the benefits the member will receive are based on the benefits that have been earned (or accrued) up to the relevant date.

For example, a plan may provide that a member is entitled to begin receiving an unreduced pension when he or she reaches 60 years of age. The plan also offers a bridging benefit payable from age 60 to age 65. If a member's membership is terminated when he or she is 48 and at the date of termination the member has 10 years of continuous employment or membership in the plan, the member would be eligible to begin receiving an unreduced pension when he or she is 60. This is because the member's age plus years of continuous employment or membership in the plan is equal to at least 55 on the effective date of termination. The pension the member will receive will be based on the benefits he or she earned as at the effective date of wind up or termination and would also include the bridging benefit offered under the pension plan because the member has 10 years of continuous employment with the employer or has been a member of the plan for 10 years. -06/12

Q3. Will grow-in under section 74 of the PBA continue to apply to a partial wind up with an effective date before July 1, 2012?

A3. Subsection 77.7(4) of the PBA provides that grow-in under section 74 of the PBA still applies to members' entitlements on a partial wind up of a pension plan, if it has an effective date before July 1, 2012. -06/12

Q4. Will grow-in benefits continue to be provided to members on a full wind up?

A4. Yes. Grow-in benefits will continue to be provided to members on a full wind up of a pension plan. As was the case before July 1, 2012, to be eligible for grow-in benefits members must be employed in Ontario and their combination of age plus years of continuous employment or membership in the plan must equal at least 55 on the effective date of wind up. -06/12


Q5. In the case of a partial wind up, will plan administrators be required to purchase life annuities for plan members, former members, retired members, or other persons entitled to benefits under the pension plan, in order to distribute plan assets in

connection with the partial wind up?

A5. No. Section 77.7(2) of the PBA indicates that plan administrators are not required to purchase life annuities for plan members, former members, retired members, or other persons entitled to benefits under the pension plan in order to distribute the plan's assets in connection with a partial wind up. (This is consistent with the Financial Services Tribunal's Imperial Oil decision.) However, the plan administrator may purchase annuities for this group if it wishes to do so. -06/12

Purchase of Annuities on Partial Wind Up (archived on July 6, 2016)

Q1. FSCO's Policy on Distribution of Benefits on Partial Wind Up requires that all immediate and deferred pensions payable from the wound up portion of a pension plan must be provided through the purchase of life annuities from an insurance company licensed in Canada to provide such annuities. In light of the recent Financial Services Tribunal decision in the Imperial Oil case, is this still FSCO's position?

A1. The [Imperial Oil decision](#)  provided that the plan administrator was not required to purchase annuities for immediate and deferred pensions payable from the wound up portion of the pension plan. As a result of this decision, FSCO will no longer require plan administrators to purchase annuities for members affected by a partial wind up who are receiving pension payments, or who chose or are deemed to have chosen a deferred pension. However, the plan administrator, if it determines it is prudent to do so, may still purchase annuities under section 43 of the PBA.

For affected members who are eligible to and have elected the option to transfer the commuted value of their pension benefit to an insurance company for the purchase of a life annuity under section 42(1)(c) of the PBA, plan administrators must transfer the commuted value to the insurer for the purchase of an annuity for the member. Note: the annual amount of annuity purchased in these circumstances would be that which can be purchased from the insurer with the commuted value, not necessarily the amount defined under the pension plan.

FSCO will be revising Policy W100-231 and other related policies to reflect this position and identify the method to be used to determine the amount of the assets to be transferred to the on-going portion of the pension plan to support the liabilities for the immediate and deferred pensions of the partial wind up group for which annuities are not purchased. -11/10

Q2. What happens to the pension benefits if the plan administrator does not choose to purchase life annuities for members in the partial windup group who are receiving pension payments or who chose or are deemed to have chosen a deferred pension?

A2. If the plan administrator does not purchase life annuities for members affected by the partial wind up who elected or are deemed to have elected a pension or a deferred pension, the liabilities and supporting assets for this group will be transferred to the on-going portion of the pension plan. Affected members already in receipt of pension payments prior to the transfer will continue to receive pension payments from the pension fund. Affected members with a deferred pension will also receive pension payments from the pension fund when they retire. - 03/10

Q3. Will the member remain entitled to any surplus related to the partial wind up if the immediate or deferred pensions are transferred to the on-going portion of the plan?

A3. If any surplus is to be paid to the members affected by the partial wind up, all affected members including retired and former members will be entitled to a portion of that surplus, regardless of what options they have chosen in respect of their pension benefits. - 03/10

Surplus Withdrawal on Wind Up (archived on July 9, 2012)

Q. What is FSCO's position regarding applications for withdrawal of surplus on full or partial wind up now that some of the amendments made to section 79 of the Pension Benefits Act by Bill 236 have been proclaimed?

A. See surplus provisions updated by [Bill 120](#). - 12/10

Q. What constitutes notice for the purpose of s. 78(2)?

A. Employers who apply to withdraw surplus on a full or partial wind up pursuant to s. 79(3) or (3.1) must provide full disclosure of information to all those members, former members and other persons who are entitled to payments under the pension plan, and who must consent to the payment of surplus. The Superintendent must be satisfied that these individuals are provided with sufficient information so that they can make an informed decision.

Section 78(2) of the PBA requires an employer who applies for consent to payment of surplus out of a pension fund to transmit notice of the application, containing prescribed information, to:

- (a) each member and former member of the pension plan to which the pension fund relates;
- (b) each trade union that represents members of the pension plan;
- (c) any other individual who is receiving payments out of the pension fund; and
- (d) the advisory committee of the pension plan.

Section 25(1) of Regulation 909 made under the PBA prescribes the following information for the purpose of a notice under s. 78(2) of the PBA:

1. The name of the pension plan and its provincial registration number.
2. The valuation date of the report provided with the application and the amount of surplus in the pension plan.
3. The surplus attributable to employee and employer contributions.
4. The amount of surplus withdrawal requested.
5. A statement that submissions in respect of the application may be made in writing to the Superintendent within thirty days after receipt of the notice.
6. The contractual authority for surplus withdrawals.
7. Notice that copies of the report and certificates filed with the Superintendent in support of the surplus request are available for review at the offices of the employer and information on how copies of the report may be obtained.

Please refer to FSCO [Pension Policies](#) S900-401, S900-503, S900-505, S900-510, S900-511, and S900-802 for further information. Note especially paragraph 9 in each of policies S900-510

and S900-511, which requires full and complete disclosure of all provisions that may be relevant in determining entitlement to payment of surplus on a full or partial wind up. - 09/10

Payment of Surplus to an Employer

Q. What new rules apply for payment of surplus to the employer while the pension plan continues to exist?

A. If a pension plan continues to exist, surplus can only be paid to the employer if one of the following two conditions is satisfied:

1. The employer demonstrates that it is entitled to surplus under the terms of the pension plan. (For more information, see the following question: How does the employer demonstrate that it has met the first condition: that it is entitled to surplus under the terms of the pension plan?)
2. A written agreement allows surplus to be paid to the employer. (For more information, see the following question: How does the employer demonstrate that it has met the second condition: that a written agreement allows surplus to be paid to the employer?)

In addition to satisfying one of the above conditions, the Superintendent must also be satisfied of the following:

- the pension plan has a surplus based on the reports that were included with the employer's application for the surplus payment;
- if all pension benefits are guaranteed by an insurance company, the pension fund must retain an amount as surplus that is equal to at least two years of the normal cost of the pension plan (determined in accordance with the regulations);
- if any pension benefits are not guaranteed by an insurance company, the greater of the following amounts must be retained in the pension fund as surplus:
 - the sum of an amount equal to twice the normal cost of the pension plan and an amount equal to 5 per cent of the plan's liabilities (determined in accordance with the regulations); and
 - an amount equal to 25 per cent of the plan's liabilities (determined in accordance with the regulations).
- the applicant and the plan comply with all other prescribed requirements regarding the surplus payment. - 12/10

Q. What new rules apply for payment of surplus to the employer when the pension plan is fully or partially wound up?

A. If a pension plan is fully or partially wound up, surplus can only be paid to the employer if one of the following two conditions is satisfied:

1. The employer demonstrates that it is entitled to surplus under the terms of the pension plan. (For more information, see the following question: How does the employer demonstrate that it has met the first condition: that it is entitled to surplus under the terms of the pension plan?)

2. A written agreement allows surplus to be paid to the employer. (For more information, see the following question: How does the employer demonstrate that it has met the second condition: that a written agreement allows surplus to be paid to the employer?)

In the future when rules are proclaimed, an employer will be able to receive a payment of surplus when a pension plan is fully or partially wound up and a binding arbitration award has been issued without satisfying either of these two conditions.

In addition to being satisfied about one of the above conditions, the Superintendent must also be satisfied of the following:

- the pension plan has a surplus based on the reports that were included with the employer's application for the surplus payment;
- provisions were made for paying all of the plan's liabilities, as calculated for the purpose of terminating the plan; and
- the applicant and the plan comply with all other prescribed requirements regarding the surplus payment. - 12/10

Q. How does the employer demonstrate that it has met the first condition: that it is entitled to surplus under the terms of the pension plan?

A. The documents that create and support the pension plan and pension fund must state that a surplus can be paid to the employer in one of the following situations (whichever applies):

- while the plan continues to exist; or
- when the plan is wound up (either fully or partially).

The employer can apply for the Superintendent's consent based on the documents, or it can seek a court order that confirms its entitlement.

If the employer is relying on the terms of the pension plan or pension fund to support its entitlement to a surplus, it does not need to obtain the agreement of plan members or any other individuals. However, the employer must take into account all past and present documents that create and support the pension plan and pension fund — not just the current terms of the plan.
- 12/10

Q. How does the employer demonstrate that it has met the second condition: that a written agreement allows surplus to be paid to the employer?

A. A written agreement may allow the employer to receive a surplus payment in one of the following situations (whichever applies):

- while the plan continues to exist; or
- when the plan is wound up (either fully or partially).

If the *plan continues to exist*, the following individuals or entities must agree to the payment:

- the employer;
- at least two-thirds (2/3) of the plan members (for this purpose, a trade union that represents members may agree on their behalf); and
- the number, which is considered appropriate in the circumstances by the Superintendent, of former members and other persons who are entitled to payments under the plan, as of the specified date for payment of the surplus.

Until FSCO issues a formal policy, the Superintendent considers the agreement of two-thirds of the total number of former members and other persons who are entitled to payments under the plan, as of the date specified for the surplus payment, to be appropriate.

If the *plan is wound up in full*, the following individuals or entities must agree to the payment:

- the employer;
- at least two-thirds (2/3) of the plan members (for this purpose, a trade union that represents or represented members on the date of the wind up may agree on their behalf); and
- the number, which is considered appropriate in the circumstances by the Superintendent, of former members and other persons who are entitled to payments under the plan, as of the date of the wind up.

Until FSCO issues a formal policy, the Superintendent considers the agreement of two-thirds of the total number of former members and other persons who are entitled to payments under the plan, as of the date of the wind up, to be appropriate.

If the *plan is partially wound up*, the following individuals or entities must agree to the payment:

- the employer;
- at least two-thirds (2/3) of the plan members who are affected by the **partial** wind up (for this purpose, a trade union that represents or represented **affected** members on the date of the **partial** wind up may agree on their behalf); and
- the number, which is considered appropriate in the circumstances by the Superintendent, of former members and other persons who are affected by the partial wind up, and who are entitled to payments under the plan as of the date of the partial wind up.

Until FSCO issues a formal policy, the Superintendent considers the agreement of two-thirds of the total number of former members and other persons who are entitled to payments under the plan, as of the date of the partial wind up, to be appropriate. - 12/10

Q. I currently have a surplus refund application with FSCO. Will the changes to Bill 120 have any impact on my application?

A. Yes, Bill 120 will impact your application for a surplus refund. FSCO will review all existing applications in light of the new requirements under Bill 120. If you have any questions or wish to discuss this further, please contact the pension officer who is responsible for your plan. If you are not sure, you can call FSCO at (416) 250-7250 or toll-free in Ontario and Quebec at 1-800-668-0128 or can find the pension officer through the pension plan access link on FSCO's website. - 12/10