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SECTION:	Wind Up
INDEX NO.:	W100-109
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 ss. 1, 70 and 77.4 - Regulation 909 ss. 1.4, 30 and 35
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO website (September 2013)
EFFECTIVE DATE:	July 1, 2012
REPLACES:	W100-108

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This policy replaces W100-108 (Allocation of Assets in a Multi-Jurisdictional Pension Plan Providing Defined Benefits Guaranteed in Whole or in Part by the Pension Benefits Guarantee Fund) 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 will only cover situations where the pension plan being wound up is subject to the Memorandum of Reciprocal Agreement.** Situations where the wind up of a pension plan that is subject to the Agreement Respecting Multi-Jurisdictional Pension Plans, partially or entirely, will be addressed in another policy that will be developed in the near future. In the meantime, plan administrators and their agents may contact FSCO if they have any questions regarding a situation not covered in this policy.

Specifically, 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). It takes 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 employment in Ontario and pension benefits in respect of employment in one or more of the designated jurisdictions or employment covered by the federal *Pension Benefits Standards Act*. A designated jurisdiction is as defined in section 1.4 of the Regulation and includes all provinces in Canada, except Prince Edward Island. Furthermore, Canada's status as a designated jurisdiction applies in respect of included employment as defined under the federal *Pension Benefits Standards Act*. 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.

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.

The PBA was amended July 1, 2012 to eliminate any partial wind ups where the effective date of the partial wind up is on or after July 1, 2012. A plan may still be wound up in part if the effective date of the partial wind up is prior to July 1, 2012. Where a plan is wound up in part, certain sections of the PBA and Regulation as they relate to full wind ups still apply, with necessary modifications, to the partial wind up of a plan.

### **Amendments to Section 30 of the Regulation**

Section 30 of the Regulation was amended in December 2006 to apply on the wind up or partial wind up of a multi-jurisdictional pension plan that provides defined benefits guaranteed in whole or in part by the PBGF, and not just to a pension plan in a deficit funding position. In addition, the liability for any benefit enhancements resulting from the application of section 74 of the PBA (grow-in benefits), must be included in the liabilities when they are allocated among the various jurisdictions (see Regulation section 30(2)(b)(v.1)).

### **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.

Sections 70 and 77.4 of the PBA set 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 - Sections 70(1) and 77.4.
- 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 the Superintendent of Financial Services (Superintendent) - Sections 70(2) to 70(4).
- Protecting the interests of members. The Superintendent has the authority 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, retired members and other persons entitled to benefits under of the pension plan - Section 70(5).
- Preserving the rights and benefits on wind up. On a partial wind up of a pension plan, members, former members, retired 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 77.4(2).

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 a partial wind up.

### **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 sections 70 and 77.4 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 member, former member or retired member.

2. Liabilities

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 retired member under the pension plan are set out in section 30(2)(b) and **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,
- 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 under section 30(2)(a),
- any escalated adjustments that have not been made as of the effective date of the wind up,
- any prospective benefit increases, and
- any benefits provided under a qualifying annuity contract or a contract issued under the *Government Annuities Act* (Canada) if the contract was issued before January 1, 1988.

The liabilities in respect of each member, former member or retired member shall not be less than the minimum value of the required contributions made by him or her, as set out in section 30(2)(c).

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

Once the liabilities are determined in accordance with sections 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 jurisdiction, and
- liabilities in respect of all other employment for which pension benefits were provided.

#### 4. Allocating **Assets** Among Jurisdictions

The allocation of solvency assets, as defined in section 30(2)(e) 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.

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. Meanwhile, the methodology in section 30 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.