

## **Policy Bulletin #6**

# **Termination of a Pension Plan**

Issued July 2000 / Revised July 2007

The termination of a pension plan that is registered in Alberta involves certain specific filing requirements and procedures. These are, for the most part, outlined in Part 5 of the *Employment Pension Plans Act* (the Act).

This bulletin is a revision of a previous bulletin. It has no legal authority. The Act and Regulation should be used to determine specific legislative requirements.

### **PLAN TERMINATION**

**Total Plan Termination** Under Sections 70 and 71 of the Act, a pension plan terminates when

- (a) registration is refused or cancelled;
- (b) employer contributions or the crediting of benefits cease or are suspended for all members of the plan<sup>1</sup>;
- (c) all members of the plan suspend membership<sup>2</sup>; or
- (d) the Superintendent of Pensions declares a termination.

Employer contributions are deemed to have ceased if they have not been remitted to the fund holder within the time periods prescribed in section 49 of the Regulation, and the Superintendent considers that the employer does not intend to make the contributions and so notifies the employer. Employer contributions are not deemed to have ceased if they are being made from excess assets under the plan, as long as this is not otherwise prohibited by the plan provisions.

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<sup>1</sup> This does not apply to Plans for Connected Individuals (PCI). The suspension or retirement of all members (or the only member) of a PCI is not automatically deemed to terminate the plan, although the administrator may declare a plan termination

<sup>2</sup> See Footnote 1

**Partial Plan Termination** A partial plan termination occurs under the Act when employer contributions, or the crediting of benefits, cease or are suspended for an identifiable group, operation, or class of plan members.

Some examples of identifiable groups, operations or classes are:

- (a) all the members of a class of employees as outlined in section 30 of the Regulation;
- (b) all members at a specific location or operation (e.g. store, packaging section, plant, etc.) of the employer; and
- (c) all employees who are terminated from employment, due to the sale of the operation in which they were employed, and who are not employed by the successor employer, or who do not immediately become members of the successor employer's pension plan.

The number of members involved is not a factor in determining whether a partial plan termination has occurred. For example, if a store that employs only one plan member closes, a partial plan termination is deemed to have occurred.

**Special Rules for SMEPP's**

Except with respect to those specified multi-employer plans which have received approval under section 31(4) of the Act, cessation of contributions by an individual participating employer does not constitute a partial plan termination, unless the plan specifically provides otherwise. Approval under section 31(4) means that the plan is treated the same as a single employer plan. Therefore, the withdrawal of an employer will be considered a partial plan termination.

**Special Rules for MUPP's**

Section 70(10) of the Act identifies that a partial plan termination occurs where a participating employer in a MUPP withdraws from the pension plan (unless the affected members enroll in another pension plan as a result of the withdrawal). Section 63 of the Regulation stipulates that the participating employer is responsible for the amortization of the solvency deficiency, if any, in respect of the affected employees.

A partial termination report must be filed with the Superintendent and consent granted, before any assets may be disbursed.

## **Disposal of a Business**

Total or partial termination of a pension plan occurs when all or a part of a business is sold or merged, for those members whose employment is terminated as a result of the sale or merger. It occurs for all other affected plan members if

- (a) the successor employer has no pension plan which the affected employees may join; or
- (b) the successor employer has a pension plan which the affected employees must join, but that employer does not wish to assume the liability for the predecessor plan benefits.

A partial plan termination may also occur if members are moving from a plan in which membership was mandatory to a plan in which membership is voluntary. In this case the transferring members may be given a onetime option to opt out of the plan, in which case a partial plan termination is declared for the group that opts out (see also [Policy Bulletin #9 - Plan Merger and Successor Employer Situations](#) regarding mergers and successor plan situations).

Please note that, in accordance with sections 35 and 38 of the Act, entitlements transferred out of the terminating plan on behalf of members are subject to the locking-in rules.

## **THE TERMINATION PROCESS**

**There are seven steps in the termination process:**

1. Notice of Termination;
2. Final Remittance of Contributions;
3. Filing Required Documents;
4. Approval;
5. Disclosure;
6. Wind-up (disbursement of assets) -- Note: wind-up may be delayed up to a period of 5 years if the employer is required to make solvency payments under section 73 of the Act; and
7. Cancellation of plan registration.

The following description of each step applies equally to both total and partial plan termination unless stated otherwise. Please note that no funds related to the termination of the plan may be released or paid out until the Superintendent has approved the termination.

**1. Notice of Termination**

Where it is intended that a pension plan be terminated the plan administrator must notify both the Superintendent and all plan members and former members who continue to have an entitlement under the plan, in writing, of that fact

1. 60 days prior to the effective date of termination; or
2. if it is decided that the effective date of termination will be in less than 60 days, immediately after deciding to terminate the plan.

**2. Final Remittance of Contributions**

Within 30 days after the effective date of termination, the employer shall remit to the pension fund holder all outstanding employee contributions plus all employer contributions required by the terms of the plan or the Act in respect of benefits accrued to the date of termination.

*With Solvency Deficiency*

Where a solvency deficiency exists at termination of a plan, the employer shall amortize any outstanding solvency deficiency identified with the plan termination report. There is an exception for plans where employer contributions are established via a collectively bargained rate (see below).

The solvency deficiency calculated at that time is based on the valuation of plan termination liabilities. It replaces any previously identified solvency deficiencies, and is estimated without taking into account the present value of any outstanding special payments for going-concern unfunded liabilities. The employer may either pay off the solvency deficiency in a lump sum or via payments made at least monthly over a period of not more than five years from the review date, until the plan's assets are sufficient to pay all benefits payable.

At termination, the plan's assets are to be allocated and paid to each member or persons entitled to benefits in proportion to his commuted value entitlement, reduced according to the plan's solvency ratio as per the termination valuation. Once the special payments have been made, each member receives a share of the remaining assets in the same proportion as was established at the time of plan termination.

In the case of a multi-unit plan, where a solvency deficiency exists at the termination of the plan or where a participating employer withdraws from the plan and does not join or establish a successor plan, those terminated employers must continue to make solvency payments into the fund. The same method as outlined above is used to distribute the terminating plan members' benefits to them at the original termination date and after payments have been completed to cover the shortfall.

In the case of a specified multi-employer plan, employers are required only to contribute their pre-bargained amount, regardless of whether or not it meets solvency requirements. After the final contributions are remitted by employers to the fund within 30 days of termination, the plan's assets are distributed in the same manner as used above and where there is a deficit, benefits are reduced by first reducing any benefits to which existing unfunded liabilities apply and then applying the solvency ratio to remaining benefits.

Annual Information Returns (AIR) and filing fees must continue to be filed after plan termination until the solvency deficiency has been eliminated. As there are no active members, the AIR filing fee required is the minimum amount. No actuarial valuations are required after the plan termination until the final solvency payment is made. Within 60 days of that plan wind-up date, an updated termination report must be filed.

A solvency liability is not re-estimated after plan termination; thus, members and former members receive shares of the fund's assets in proportion to their commuted value entitlements.

For a full understanding of the rules for paying off a solvency deficiency at plan termination, it is strongly recommended that the plan administrator or consultant refer to section 73 of the Act and sections 48, 55 and 63 of the Regulation.

### **3. Filing Required Documents**

#### *Required Documents*

The standard documents required to terminate the pension plan are:

1. the termination report;
2. an executed plan amendment and/or Board Resolution (if required according to the terms of the Plan document) or a letter from the employer terminating the plan; and
3. all outstanding Annual Information Returns and filing fees to the date of plan termination (full plan termination only).

These documents must be filed with the Superintendent within 60 days after the date of termination. The date of termination is normally the last date for which contributions have been remitted by the employer, or for which benefits have been credited.

#### *The Termination Report*

The termination report must be submitted to the Superintendent, and consent obtained, before assets can be disbursed. The Superintendent may request such other documentation as is deemed necessary to approve the termination report and subsequent plan wind-up.

#### *Annual Information Return and Filing Fee*

Where the plan termination date is effective after the last day of the plan year for which an Annual Information Return has been filed, an additional Return is required. This Return must cover the period from the last Return filed to the date of termination. The full filing fee must be included with the Return.

**Content of Termination Report / Valuation**

*Termination of Plans with Defined Contribution Provisions*

1. The effective date and reason for termination,
2. Confirmation that all affected members are 100% vested,
3. Confirmation there is no continuing pension plan; or if there is a continuing plan, confirmation that the successor employer will not accept assets of the affected members,
4. Total number of affected members, and a breakdown of number of members by jurisdiction,
5. The aggregate value of termination assets, and
6. The value of surplus assets and the intended use of those amounts. This requirement applies on full termination, or where surplus distribution is required by the terms of the plan or other pension legislation.

*Termination of Plans with Defined Benefit Provisions*

1. The effective date and reason for termination,
2. Confirmation that all affected members are 100% vested,
3. Confirmation there is no continuing pension plan; or if there is a continuing plan, confirmation that the successor employer will not accept assets and liabilities of the affected members,
4. Total number of affected members, and a breakdown of number of members by jurisdiction,
5. Aggregate value of plan assets and liabilities and (for partial terminations), the aggregate value of assets and liabilities related to the partially terminated members,

6. A valuation report as of the effective date of termination,

For partial terminations, an interim cost certificate rather than the valuation is acceptable. The Superintendent still retains the ability to request a full valuation report.

If the actuary views that the partial termination has an immaterial impact on the funding of the plan, a statement to that effect is acceptable in lieu of the interim cost certificate.

7. Confirmation that liabilities were calculated as per Canadian Institute of Actuaries guidelines, or a description of the methods and assumptions used to calculate liabilities if different. However, the basis used in determining the liabilities must be at least equal to CIA standards).
8. If the solvency ratio at termination is less than one, an explanation of the treatment of the deficiency, and
9. The value of surplus assets and the intended use of those amounts. This requirement applies on full termination, or where surplus distribution is required by the terms of the plan or other pension legislation

*Note: Detailed member lists that include the name, date of hire, and employee / employer account balanced (on a locked-in and non-locked in basis) or the commuted value of each affected member are no longer required. Similarly, there is no longer a requirement to provide a copy of the disclosure given to affected members.*

#### *Treatment of a Deficit (on Bankruptcy*

*(Peel-back method)*

Where assets are not sufficient to pay all benefits payable at plan termination and as a result of bankruptcy no solvency payments can be made, the balance of the plan's assets is allocated as follows:

1. Plan assets must first be allocated to provide for the value of all voluntary and optional ancillary contributions, as well as contributions transferred from another plan (that aren't used for a past service purchase);
2. Next, reduce the commuted value of each member's benefit for which there exists unfunded liabilities. I.e. "peel-back" benefits so that the resultant benefit is fully funded on a going-concern basis;

3. Finally, multiply the commuted value of this peeled-back benefit by the solvency ratio of the plan that exists as at the termination date.

The reduction of accrued benefits is permissible only in the following situations:

- In respect of plans to which section 48(6) of the Act applies, only if there is a termination of the whole plan,
- In respect to multi-unit plans, only where one or more of the participating employers are declared bankrupt, and
- In respect to any other plan, only if payments by an employer under section 73(2) of the Act stop due to the employer's being declared bankrupt.

Any defined benefit provision that is winding up under these circumstances is recommended to work with the Superintendent in preparation of the termination report.

#### *Treatment of Surplus*

Where there is a surplus in the plan at termination, and any of the surplus is to be allocated amongst the members, the method of allocation, and the amount allocated to each individual must be included in the termination report and approved by written consent of the Superintendent.

Where there is a surplus in the plan at termination, and the employer intends to seek notice under Section 83(1)(c) of the Act for a surplus refund, the procedures outlined in section 83 of the Act and section 67 of the Regulation, and further described in [Policy Bulletin #4 - Removal of Funds from Pension Plans](#), must be followed.

If the request for notice will delay the winding-up of the plan, due to the need for a legal determination of relevant plan wording, approval may be requested to wind-up of that portion of the plan relating to accrued benefits, and to delay wind-up with respect to the plan surplus (full plan termination only).

*Treatment of a Partial Termination Creating a Solvency Deficiency*

A partial plan termination may not negatively impact the members affected by the termination relative to those members remaining in the pension plan or vice versa.

That is, the payment of termination benefits to the members affected by the partial termination must be made in accordance with the solvency position of the plan as it existed at the termination date, so that the solvency ratio of the plan on a post-partial termination basis is at least equal to the solvency ratio of the plan prior to the partial termination.

Where a partial termination creates a solvency deficiency, the plan sponsor may either:

- a) Immediately amortize that solvency deficiency in a lump sum payment. In this situation, the full commuted value of the benefit of the affected member may be paid out (if elected by that member),

OR

- b) Amortize the solvency deficiency in monthly payments over a period not greater than 5 years including accrued interest. In this situation, the amount transferable from the plan fund on behalf of (and if elected by) the affected member is an amount equalling the commuted value of the benefit less the transfer deficiency related to the partial termination. Any transfer deficiency remaining shall be transferred within 5 years of the initial transfer and must include interest up to the end of the month immediately preceding the date when the last transfer is made.

*Commutated Value of Benefits and the Crediting of Interest on Plan Termination*

Where a pension plan with defined benefit provisions is **terminated** in full and where the commuted value for affected members is calculated, that commuted value is to be carried forward (from the date of termination of the plan to the ultimate date of payment) with the fund rate of return **rather than** at the rate used to calculate that commuted value.

This provision eliminates the continual creation of experience gains / losses that can occur where a plan terminates but the payment of benefits does not occur in the month in which the commuted value of the benefit was determined.

*Authority to Sign a Termination Report*

In accordance with section 64 of the Regulation, the termination report must be prepared and signed by:

- (a) a Fellow of the Canadian Institute of Actuaries; or
- (b) in the case of an insured plan, any person so authorized by the company insuring the plan; or
- (c) in the case of a plan that consists solely of defined contribution provisions, a representative of the fund holder who is so authorized by that fund holder, by the administrator, or by another person approved by the Superintendent.

**4. Approval**

Once all required documentation has been filed and found acceptable, plan termination will be approved and a notice to disburse assets will be issued.

Until this written notice has been received the assets of the plan must not be paid out, except in those instances where the Superintendent has given written permission to do so under section 77(1) of the Act.

Written permission is not required for payment of benefits in respect of events which took place prior to the effective date of termination.

**5. Disclosure**

Within 60 days after the plan administrator has received approval of the termination report from the Superintendent, each plan member and former member must be provided with a termination statement.

The termination statement must include all the relevant information listed in section 15 or 16 of the Regulation, as applicable. It must also include,

- 1. if, as a result of bankruptcy, benefits are to be reduced, the reasons for the reduction and a description of the method of reduction; or
- 2. if there are surplus assets, how they will be utilized.

3. If a solvency deficiency exists, methods by which payments will be made and values of payment, as well as a statement that members and former members will receive an additional payment when the solvency deficiency has been paid off.

Where the employer is seeking a surplus refund, the additional disclosure requirements of section 67(2) and 67(2.1) of the Regulation must be met.

Please see [Policy Bulletin #4 - Removal of Funds from a Pension Plan](#), for further details.

Members are entitled to the same options that they would have had, had they terminated their membership as vested members on the effective date of termination (i.e. cash refund if not locked in, locked-in transfer, etc.). They must be given at least 90 days after the receipt of their termination statements to make their elections.

## 6. Windup

Wind-up is the process of distributing the assets of the plan.

### *Immediate Windup*

Winding-up must commence immediately after the plan termination has been approved except if permission to delay has been received (see Delayed Wind-up, below).

### Total plan termination

In the case of a full plan termination, all assets must be disbursed. Active members may elect how they wish their benefits to be paid, subject to locking-in requirements. Annuities must be purchased for pensioners and those who elect to retire.

The fund cannot continue once the plan has been terminated except as noted below.

### *Missing Members:*

Where members cannot be located and the employer has provided the Superintendent with evidence that he has tried to locate them, assets related to those members may be transferred to the Public Trustee. See [Policy Bulletin #21 - Missing Persons in Cases of Full Plan Termination](#) for details on this provision.

### Partial Plan Termination

In the case of a partial plan termination, all those assets related to the partial termination must be disbursed. However, members are permitted to become deferred members of the Plan or to commence their pension from the plan fund.

#### *Delayed Wind Up*

Under special circumstances, the Superintendent will consent to a delay in winding-up the pension plan. This consent must be applied for, in writing, with a full explanation as to the need for the delay, and an estimated date when wind-up can be expected to proceed.

Please note that continuing the fund solely for the purpose of paying pensions is not an acceptable reason for delaying the wind-up. Some examples of acceptable reasons are:

1. to avoid a distress sale of assets which would cause a loss to the fund; or
2. to settle the issue of surplus ownership; or
3. to complete funding of a deficit and solvency payments.

The delay must normally be of a short-term nature. The Superintendent may at any time withdraw consent to the delay. Once this is done, or once the plan sponsor decides to proceed with wind-up, an updated termination report must be filed with the Superintendent before assets are disbursed.

#### *Confirmation to Superintendent*

To complete a full or partial termination, the plan administrator must confirm / provide to the Superintendent the following:

1. If a group annuity has been purchased, the policy number and contact information of the insurance company providing the annuity, and confirmation that affected members have been advised of the purchase.

For full terminations only, a list of all members for whom the group annuity has been purchased is also required.

In the event that *individual* annuities are purchased, the contact information of the insurance company is **not** required.

2. Confirmation that all assets have been disbursed, and
3. The date of asset disbursal.

**7. Cancellation of Plan Registration** In the case of a full plan termination, on receipt of confirmation of full disbursement, the Superintendent will issue a notice of cancellation of registration of the pension plan.

Until this notice is issued the plan remains registered and the plan administrator continues to stand in a fiduciary role to members whose benefits have not yet been paid out.

For further information please contact:

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