

Proposed Amendments to Regulation 909: Superintendent Power to Appoint or Act as Administrator

A. Background

Bill 120, the *Securing Pension Benefits Now and for the Future Act, 2010*, amended the *Pension Benefits Act* (PBA) to add provisions, currently unproclaimed, that would allow the Superintendent of Financial Services (Superintendent) to appoint or act as the administrator of a pension plan in prescribed circumstances. The government indicated its intention to develop regulations needed to proclaim these amendments in the 2014 *Ontario Economic Outlook and Fiscal Review*. The 2015 *Budget* reiterated this intention.

This posting describes proposed circumstances to be prescribed in regulations in which the Superintendent could use these powers.

The following provisions of the PBA would be proclaimed if a regulation described in this posting were to be enacted:

- Clauses 8(1)(g) and (g.1), which add a person appointed by the Superintendent and the Superintendent to the list of permitted administrators;
- Subsection 8(1.1), which would allow the Superintendent, in prescribed circumstances, to appoint an administrator for a pension plan. The Superintendent would be able to terminate the appointment if the Superintendent considers the termination reasonable in the circumstances;
- Subsection 8(1.2), which would allow the Superintendent, in prescribed circumstances, to act as administrator;
- Subsections 22.1(6) and (7), which would allow the fees and expenses of an appointed administrator or the Superintendent acting as administrator, respectively, to be paid from the pension fund;

In addition, sections 71 and 77.5 of the PBA would be repealed. These sections provide that the Superintendent may appoint or act as administrator for a plan that is being wound up or partially wound up. They also provide that the reasonable administration costs of the Superintendent or the appointed administrator may be paid out of the pension fund and that the Superintendent may terminate the appointment of the appointed administrator if he considers it reasonable to do so. When subsections 8(1.1) and (1.2) are proclaimed, these provisions would not be needed if the circumstances in which the Superintendent could appoint or act as administrator under sections 71 and 77.5 are prescribed under subsections 8(1.1) and (1.2). These provisions would also not be needed because subsections 8(1.1) and 22.1(6) and (7), when proclaimed in force, would address the circumstances under which the Superintendent may terminate

the appointment of an appointed administrator and provide that reasonable costs of administration may be paid from the pension fund.

Stakeholders are invited to make submissions by September 22, 2016. Submissions of any length are welcome and should be emailed to pension.feedback@ontario.ca or sent to:

Pension Policy Branch
Superintendent Power to Appoint or Act as Administrator
Ministry of Finance
5th Floor, Frost Building South
7 Queen's Park Crescent East
Toronto, ON M7A 1Y7

B. Amendments Being Considered

It is proposed that the Superintendent be allowed to appoint or act as administrator of a pension plan in the following circumstances.

- 1. If a pension plan is being wound up in whole or in part and does not have an administrator or the administrator fails to act.*

This is already allowed under s. 71 of the PBA. After subsections 8(1.1) and 8(1.2) are proclaimed and s. 71 is repealed, it is intended that this ability be prescribed for the purposes of both subsections 8(1.1) to 8(1.2) to maintain the status quo for wind ups.

- 2. If the employer is bankrupt, in receivership, or the subject of proceedings under the Bankruptcy and Insolvency Act or the Companies' Creditors Arrangement Act.*

This would provide the Superintendent with the ability to appoint an administrator in circumstances when the sponsor's continuation as a going concern is in question. In such circumstances, appointment of an administrator may help limit conflicts of interest and protect benefits of members, retirees and other plan beneficiaries.

If the Superintendent appoints an administrator, s. 8(1.1) would provide that the Superintendent may terminate the appointment if the Superintendent considers the termination reasonable in the circumstances.