

Superintendent of
Financial
Services



surintendant des
services
financiers

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990,
c.P.8, as amended (the “ *PBA*”);

AND IN THE MATTER OF an Order to fund the deficit on wind
up of the **Pension Plan for Designated Employees of Smart
Insurance Services Ltd. and Associated Company, Registration
Number 0403972** (the “Plan”) sections 75 and 87 of the *PBA*.

TO: Smart Insurance Services Ltd. / Allan Smart Services Ltd.
3409 Yonge Street,
P.O. Box 94010
Toronto, ON
M4N 3R1

Attention:
Allan M.P. Smart
Chairman
Smart Insurance Services Ltd. / Allan Smart Services Ltd.

Employer and Administrator

NOTICE OF PROPOSAL

I PROPOSE TO ORDER, pursuant to sections 75 and 87, of the *PBA* that Smart Insurance
Services Ltd./Allan Smart Services Ltd. pay within thirty (30) days of the date of this Notice of
Proposal, the amounts required to fully fund the deficit relating to the March 31, 2004 wind up of
the Plan.

REASONS:

1. The Plan is a single-employer defined benefit pension plan administered by the Company. The Plan is also a designated pension plan under the Income Tax Act (“*ITA*”).
2. In March 2004, the Company declared a wind up of the Plan. On March 24, 2004, the Company filed Amendment No. 12 with the Financial Services Commission of Ontario (“FSCO”) that discontinued the Plan effective March 31, 2004.
3. The Company further filed an Actuarial Wind-Up Valuation As At March 31, 2004 for the Pension Plan for Designated Employees of Smart Insurance Services Ltd. And Associated Company (the “2004 Wind Up Report”). The 2004 Wind Up Report disclosed a wind up deficit of \$660,522 which was to be amortized over 5 years for total annual installments of \$151,774. Further, in a letter dated June 18, 2004 Company requested an extension of the amortization period from 5 to 10 years. On October 1, 2004 the Superintendent of Financial Services (the “Superintendent”) responded that there is no authority under the *PBA* and Regulation 909 R.R.O. 1990 (the “Regulation”) to extend the amortization period.
4. The Company has since filed various updates to the 2004 Wind Up Report:
 - (a) Revised Actuarial Wind-Up Valuation as at March 31, 2004 for the Pension Plan For Designated Employees of Smart Insurance Services Ltd. and Associated Company dated November 7, 2004 which disclosed a total wind up deficit of \$701,654;

- (a) Actuarial Valuation as at March 31, 2005 In Respect of the March 31, 2004 Wind-Up of the Pension Plan for Designated Employees of Smart Insurance Services Ltd. and Associated Company which disclosed a total wind up deficit of \$680,256;
- (b) Actuarial Valuation As At September 1, 2005 In Respect of the March 31, 2004 Wind Up of the Pension Plan for Designated Employees of Allan Company Ltd. which disclosed a total wind up deficit of \$642,517.

5. On November 9, 2007, the Company filed a Wind Up Valuation Report of the Pension Plan for Designated Employees of Allan Company Ltd. Update as at September 1, 2007 which indicated that the wind up deficiency was now \$193,147 and that this deficit was to be funded by amortized annual installments of \$126, 859 for 1 year and 7 months.

6. In a letter dated December 14, 2007, the Superintendent approved the 2004 Wind Up Report and associated updates. The Superintendent also advised Company that the deficit indentified in the Plan must be paid in accordance with section 75 of the *PBA* and that reports must be filed in accordance with section 32 of the Regulation which requires annual actuarial reports to be filed until there are no further amounts to be funded under section 75.

7. In a letter dated July 9, 2008 the Superintendent advised the Company that the scheduled special payment of \$97,906 was not received by the Plan custodian. The Company then indicated to the Superintendent that it was unable to make the scheduled payment and would

be funding the deficit by making payments of \$6,500 per month. In December of 2008, the Company filed the Wind-Up Valuation Report of the Pension Plan For Designated Employees of Allan Company Ltd. Update as at September 1, 2008 which disclosed that the wind up deficit was now \$466,057.

8. On January 28, 2009 the Superintendent advised the Company that the amortization period would elapse on March 31, 2008 while the wind up deficit remained at \$466,057. The Company notified the Superintendent that the Company could no longer make monthly special payments under the Plan and that the Company was being wound up.

9. On November 9, 2009 the Superintendent advised the Company that the Company was still obligated to fund the wind up deficit under section 75 of the *PBA* and that there was an outstanding wind up deficit of \$466,057. The Superintendent also suggested that section 48 of the Regulation allows significant shareholder members to consent to void amendments to reduce their benefits under the Plan and therefore reduce the Plan's liabilities.

10. In December 2009, the Company filed a Wind-Up Report On The Pension Plan for Designated Employees of Allan Company Ltd. Update as at September 1, 2009 ("2009 Wind Up Update") which disclosed a wind up deficit of \$893,031. In a letter dated December 11, 2009 the Superintendent reminded the Company that as the employer under the Plan it was responsible to fund any deficit as required by section 75 of the *PBA* and the Regulation. The Superintendent further noted that the Plan is a designated plan under the *ITA*. As such, in accordance with

section 47(2.1) of the Regulation the Plan is not covered by the Pension Benefits Guarantee Fund.

11. On January 10, 2010 the Company responded and indicated that it did not intend to amend the Plan to reduce the benefits of significant shareholders.

12. Section 75 of the *PBA* states:

75. (1) Where a pension plan is wound up in whole or in part, the employer shall pay into the pension fund,
- (a) an amount equal to the total of all payments that, under this Act, the regulations and the pension plan, are due or that have accrued and that have not been paid into the pension fund; and
 - (b) an amount equal to the amount by which,
 - (i) the value of the pension benefits under the pension plan that would be guaranteed by the Guarantee Fund under this Act and the regulations if the Superintendent declares that the Guarantee Fund applies to the pension plan,
 - (ii) the value of the pension benefits accrued with respect to employment in Ontario vested under the pension plan, and
 - (iii) the value of benefits accrued with respect to employment in Ontario resulting from the application of subsection 39 (3) (50 per cent rule) and section 74,

exceed the value of the assets of the pension fund allocated as prescribed for payment of pension benefits accrued with respect to employment in Ontario.

13. Section 31 of the Regulation indicates that a wind up deficit funded in accordance with section 75 of the *PBA* shall be funded by annual special payments commencing at the effective date of the wind up and made by the employer to the pension fund. The amount can be amortized for not more than five years.

14. The Superintendent previously advised the Company that the deadline for amortized special payments to fund the wind up deficit under section 75 elapsed on March 31, 2008. Further, the Superintendent previously informed the Company that there is no authority to extend the amortization period beyond five years. As of the 2009 Wind Up Update there is still an outstanding wind up deficit of \$893,031. The Company has not made the required payments to eliminate the deficit.

15. Under sections 87(2) of the *PBA*, the Superintendent may make an order if the Superintendent is of the opinion, upon reasonable and probably grounds, that the administrator or employer of the pension plan is contravening a requirement of the *PBA* or the Regulation.

16. Section 87(3) of the *PBA* gives the Superintendent the authority to specify the time or times when the period or periods of time within which the person to whom the order is directed must comply with the order. As such, the Superintendent requires that the Company fully fund the wind up deficit within 30 days from the date of this Notice of Proposal.

17. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the “Tribunal”) pursuant to s. 89(6) of the *PBA*. To request a hearing, you must deliver, to the Tribunal, a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.¹

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416- 226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY CARRY OUT THE REFUSALS AND MAKE THE ORDERS AS PROPOSED IN THIS NOTICE.

DATED at Toronto, Ontario, this **20th** day of **April, 2010**

K. David Gordon
Deputy Superintendent, Pensions

¹ Note - Pursuant to section 112 of the *PBA* any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.