Financial Services Commission of Ontario
Commission des services financiers de l'Ontario

Ontario

SECTION:	Administration
INDEX NO.:	A100-100
TITLE:	Pension Fund Administration – Responsibilities of Fund Holders - PBA ss. 22(6), 22(8), 56, 56.1 and 62 - Regulation 909 ss. 6.1, 54 and 79 - Pension Benefits Standards Regulations ss. 6 and 7, and Schedule III
APPROVED BY:	Superintendent of Financial Services
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This policy replaces T900-300 (Responsibilities of Fund Trustee – Transfer of Assets Between Plans – PBA s. 22(8)) 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*. All pension policies can be accessed from the* **Pensions** *section of the website through the* **Pension Policies** *link.*

The purpose of this policy is to set out the responsibilities of pension fund trustees, also referred to as fund holders. The fund holder is the financial institution or party that is retained by the administrator of the pension plan (administrator) to hold the pension fund's assets in accordance with the terms of the fund holder agreement(s), legislated requirements (including the Income Tax Act (ITA)), and the terms of the pension plan. The key players in fund holder arrangements are the administrator, fund holder and custodian.

Administrators

The administrator is the individual, group, body or entity that is ultimately responsible for the oversight, management and administration of the pension plan and its pension fund, as well as the investment of the pension fund. This includes, but is not limited to, selecting and monitoring third party service providers. The administrator is responsible for investing the pension plan assets in compliance with the requirements of the PBA and Regulation. As provided in section 62 of the PBA every person engaged in selecting an investment with the assets of a pension fund shall ensure the investment is selected in accordance with the criteria set out in the PBA and Regulation. While the administrator may delegate investment functions to a third party service provider, it has ultimate responsibility for the investment activities. As set out in section 79 of the Regulation, plan assets are to be invested in accordance with the federal investment regulations (FIR). The FIR rules on permitted investments and loans include certain quantitative limits, related party transactions, and the plan's statement of investment policies and procedures (SIP&P).

Pension fund assets are to be invested:

- in a name that clearly indicates the investment is held in trust for the plan, and where the investment may be registered, it is registered in that name;
- in the name of a financial institution or a nominee, in accordance with a custodial agreement or trust agreement that clearly indicates the investment is held for the plan; or
- in the name of the Canadian Depository for Securities Limited, or a nominee in accordance with a custodial agreement or trust agreement that clearly indicates the investment is held for the plan.

Fund Holders/Fund Trustees

As set out in section 54 of the Regulation a pension fund shall be administered only by certain parties which include:

- a government;
- an insurance company;
- a trust in Canada governed by a written trust agreement under which the trustees are:
    - i) a trust corporation,
    - ii) three or more individuals, where at least three reside in Canada, and at least one is independent of any employer contributing to the fund to the extent the individual is not a significant shareholder, partner, proprietor, director, officer, or an employee of an employer contributing to the fund or an affiliate of the employer, or
    - iii) a corporate pension society;
- a board, agency, commission or corporation made responsible by a legislative act for the administration of the pension fund; or
- any combination of these parties.

Any of the parties listed in section 54 may act as the fund holder of the plan assets. The fund holder is the financial institution or party retained by the administrator to manage the pension fund and to ensure the pension fund is administered and invested in accordance with relevant pension plan documents, the PBA and Regulation, and the ITA. The administrator establishes the fund holder structure and delegates roles to the fund holder which may be a classic trustee or a directed custodial trustee relationship.

When the fund holder is a trust company, the administrator or the investment manager(s) appointed by the administrator provide direction for investing the fund assets. When the fund holder is an insurance company, the contract with the insurance company constitutes the investment of the pension fund assets. When the pension fund assets are held by an insurance company, the pension fund asset is the contract with the insurance company. The particular investments made by the insurance company are not the property of the pension fund and may be held in the name of the insurance company.

If the fund holder is a trustee, any pension fund investment that can be registered must be registered in the name of the trust for the plan, and any investment that cannot be registered must be invested in a name that clearly indicates it is held in trust for the pension plan. If the fund holder is not a trustee, pension fund investments must be held by the financial institution or financial intermediary in a name that clearly indicates they are held for the pension plan.

Fund Holder Responsibilities

The fund holder is an agent of the administrator with certain fiduciary responsibilities and other obligations under the PBA and Regulation, trust law (if applicable) and common law. The fund holder is responsible for:

- ensuring that the pension plan's funds are held exclusively for the pension plan and that the fund holder has clear, accurate and up-to-date records reflecting this requirement;
- holding funds in a manner required by the PBA and Regulation, and the ITA;
- acting under the terms of a fund holder agreement that meets the requirements of the PBA and Regulation;
- reporting omissions or delays in contribution remittances to the Superintendent of Financial Services (Superintendent), as required by pension legislation;
- meeting the reporting and recordkeeping responsibilities set out in the fund holder agreement;
- acting on direction from the administrator and/or any other delegated person, on the investment of the pension fund's assets and in accordance with the pension plan's SIP&P, PBA and Regulation, and the ITA;
- ensuring that the pension fund's assets are held separate and apart from the employer's and fund holder's assets, except as permitted under the PBA and Regulation; and,
- reporting back to the administrator.

As the administrator's agent, a fund holder is subject to the standards that apply to the administrator (section 22(8) of the PBA). Accordingly, a fund holder should not make a payment out of a pension fund unless the payment is consistent with the plan documents, the PBA, Regulation and any applicable FSCO policy. Where the Superintendent's written consent must be obtained before making a payment out of the fund, the administrator should provide the fund holder with a copy of the consent.

The agreement between the administrator and the fund holder sets out the services the fund holder will provide to support the administration and investment of the assets of the pension fund. In view of the responsibilities placed on the fund holder, a fund holder should not be expected to administer the pension fund without having access to relevant plan documents. The administrator and its agents should ensure that the fund holder is given copies of the pension plan documents, financial statements, actuarial reports, summary of contributions, and any other documents relevant to the administration of the fund.

The Canadian Association of Pension Supervisory Authorities (CAPSA) has issued Guideline No. 5 on Fund Holder Arrangements to contribute to the consistent development and maintenance of fund holder agreements in all Canadian jurisdictions. Stakeholders are encouraged to review this guideline.

Multiple Fund Holders

The administrator may retain multiple fund holders for one pension plan. The administrator will be required to negotiate agreements with each fund holder, taking into account the duties and obligations in the pension legislation. Multiple fund holder situations commonly occur in a pension fund that offers benefits under a defined benefit and a defined contribution provision, where the administrator engages one fund holder for the defined benefit portion and another for the defined contribution portion. Larger or more complex pension plans may also have multiple fund holders.

Fund Holder's Obligation to Report Non Remittances of Contributions

There is a positive obligation for the administrator who is responsible for receiving contributions under the plan, to ensure contributions are paid when due. Under section 56.1 of the PBA, the administrator is obligated to provide the fund holder with a Summary of Contributions/Revised Summary of Contributions Form 7 which summarizes the contributions the plan sponsor must make to the pension plan. Form 7 is intended to ensure that fund holders have the required information to effectively monitor required contributions. The administrator is to provide the fund holder with the Form 7 within 60 days of the beginning of the plan's fiscal year. The fund holder measures contributions received against the summary of contributions required. The fund holder is required to notify the Superintendent within 30 days after the prescribed time if Form 7 is not provided. The fund holder also has an obligation to inform the Superintendent when contributions are not being paid into the fund in accordance with Form 7. If more than one fund holder manages the pension funds, then each fund holder is to be notified as to what portion of required contributions it should be receiving from the plan sponsor.

A fund holder is also responsible for monitoring payments into the fund. Under section 56 of the PBA and section 6.1 of the Regulation, the agent(s) responsible for receiving contributions under the pension plan are required to provide the Superintendent with written notice of any overdue contributions to a pension plan within 60 days after the date on which the agent(s) first becomes aware of the failure to make the contributions.

Custodians

The fund holder may perform custodial duties for the pension fund or may delegate part or all of those duties to a custodian. The custodian is the financial institution that holds some or all of the pension fund's assets pursuant to an agreement with the fund holder. The custodian's responsibilities include the safekeeping and servicing of the pension fund's assets. Although the custodian is not a fund holder, the fund holder may also be a custodian.

A custodial agreement provides that an investment made or held on behalf of a plan pursuant to the agreement, constitutes part of the plan's pension fund and is not at any time an asset of the custodian or nominee. The custodian must maintain sufficient records to allow ownership of any asset to be traced to the plan at any time. The administrator is to maintain a current record that clearly identifies every investment held on behalf of the plan, the name in which the investment is made, and where appropriate, the name in which the investment is registered. A trust agreement provides the legal arrangement under which the trustee holds pension fund assets for the benefit of another.

Where a separate custodial agreement has been entered into, the custodian has standard of care obligations to the party that retained its services. The custodian is responsible for holding the pension fund's assets in accordance with the terms of the custodial agreement, and must be capable of segregating the pension plan's assets, and of meeting the reporting and record keeping requirements of the custodial agreement. The custodian has an obligation to inform the Superintendent when contributions are being remitted late or are not being paid into the fund. The custodian does not have legal title to assets and owes duties to the party that retained its services.

Change of Custodians

The transfer of pension plan assets between financial institutions does not require the approval of the Superintendent, unless the assets are being transferred to a successor plan under sections 80 or 81 of the PBA. The administrator is required to inform FSCO of the asset transfer, and to provide a copy of the document which instructs the financial institution from which the funds are being transferred to transfer the funds to the new custodian. The assets are being moved from one fund holder to another fund holder in respect of the same pension plan, and this is a change of carriers. For more information on a change of custodians see FSCO policy A700-154 (Types of Asset Transfers), and for more information on the filing and other requirements that arise from a change of custodians see FSCO policy A700-151 (Change of Custodian – Filing and Amendment Requirements).