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SECTION:	Assets
INDEX NO.:	A700-251
TITLE:	Full Asset Transfers under Section 81 – Superintendent’s Consent Required - PBA s. 81 - Regulation 909 ss. 1, 5, 7, 14 and 17
APPROVED BY:	Superintendent of Financial Services
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REPLACES:	A700-250

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This policy replaces Policy A700-250 (Asset Transfer under Section 81 - Superintendent’s Consent Required) 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.*

*Note: Please also see policy A700-226 where there is a proposal to transfer a portion of the assets from the pension fund of a pension plan registered in Ontario to the pension fund of another pension plan, and the transfer is not subject to either s. 42 or s. 80 of the PBA.*

1. Applications that are subject to section 81 of the PBA and that provide for a combination of full and partial asset transfers will be considered on the basis of this policy and Policy A700-226 (Partial Asset Transfers under Section 81 - Superintendent’s Consent Required).
2. Where there is a proposal to transfer all of the assets from the pension fund of a pension plan registered in Ontario to the pension fund of another pension plan, and the transfer is not subject to either section 42 or section 80 of the PBA, the transfer is subject to section 81 of the PBA. Transfers from pension plans registered in other jurisdictions are subject to the legislation of the applicable jurisdiction.
3. Where section 81 applies, no transfer of assets may be made without the prior consent of the Superintendent under either of sections 81(4) or 81(8) of the PBA. This policy has been developed to assist in the preparation of applications for the Superintendent’s consent.
4. (1) The Superintendent’s prior consent to any asset transfer which affects a group of plan members who have not made transfer elections under Section 42 of the PBA must be obtained in accordance with either of sections 81(4) or 81(8) of the PBA, unless the transfer is subject to section 80(10) of the PBA.

- (2) Generally, this policy does not apply to asset transfers made in respect of individual plan members pursuant to a reciprocal transfer agreement. A reciprocal transfer agreement may be a separate filed document or may be contained in other filed documents that create and support a pension plan. Such an agreement might cover, for example, asset transfers respecting the reclassification of hourly employees to salaried status.

### **Terms**

5. (1) For the purpose of this policy, the term “exporting plan” refers to each pension plan from which an asset transfer is proposed, and prior to any transfer(s) taking place, to the pension plan that will receive the assets. The term “importing plan” refers to the pension plan to which the assets will be transferred, after the transfers have taken place. For example, if a transfer proposal affects five pension plans, there are five “exporting plans” for the purpose of this policy. Assuming that assets are transferred from four pension plans at the effective date of transfer, the assets of five exporting plans will be held in the pension fund of the “importing plan”.
  - (2) A new pension plan that has no members, former members, assets or liabilities prior to a transfer of assets may be established as the “importing plan”. In such circumstances, the example shown in subsection (1) above would refer to four “exporting plans” and one “importing plan”.
6. (1) The following terms shall have the meanings prescribed by section 1 of the Regulation under the PBA:
  - (a) actuarial gain;
  - (b) going concern liabilities;
  - (c) going concern unfunded liability;
  - (d) going concern valuation;
  - (e) solvency deficiency;
  - (f) solvency liabilities;
  - (g) special payment;
  - (h) transfer ratio.
  - (2) Subject to section 14 below, “reports” for exporting plans that provide defined benefits are prepared in accordance with sections 13 and 15 of this policy.
  - (3) The “report” for the importing plan is prepared in accordance with sections 13, 16 and 17 of this policy, as applicable.
  - (4) “Solvency valuation” means a valuation performed in accordance with section 17 of the Regulation.
  - (5) “Solvency excess” means the excess determined in accordance with section 5(17) of the Regulation.
  - (6) The term “effective date of transfer” means the effective date of the amendment(s) which give rise to the transfer(s) of assets and liabilities from the exporting plan(s) to the importing plan. Unless otherwise indicated in this policy, all values, amounts and ratios are to be determined at the effective date of transfer.

### **The Application**

7. An application for the Superintendent’s consent to a transfer of assets should include all of the information, statements or reports, as the case may be, identified in this policy.
8. The application should identify, by name and registration number, the exporting plans affected by the transfer proposal and the market value of the assets to be transferred from each applicable exporting plan.

9. Copies of the notices given pursuant to section 21 of this policy should also be included along with one certification by the administrator(s) for each notice transmitted. Certification of the date on which the notice was last transmitted, the persons or bodies to whom notice was transmitted, and the method of delivery should be provided.

### **Obtaining Consent**

10. (1) In accordance with section 81(5) of the PBA, the Superintendent shall refuse to consent to a transfer of assets that does not protect the pension benefits and any other benefits of the members and former members (benefits).
- (2) The Superintendent will consider each application on its own merits. Guidelines which the Superintendent may consider in deciding each application are identified in this policy. The Superintendent may consider other proposals which differ from the guidelines set out in this policy. The applicant should justify the need for any departures from the guidelines, and must be able to demonstrate how the benefits are protected under the circumstances.
11. The Superintendent may decide that the benefits are not protected where:
- (a) the transfer ratio of the importing plan is less than the highest transfer ratio of the exporting plans, and is less than 1.0; or
  - (b) the report for the importing plan indicates that special payments are required, and any scheduled amount of monthly amortization payment for the importing plan is less than the sum of the corresponding scheduled amounts of monthly special payments required for the exporting plans, except as adjusted in accordance with section 17 below.
12. Where a transfer of assets from a pension plan that provides defined benefits to a multi-employer pension plan, or to a pension plan that provides defined benefits where the obligation of an employer to contribute to the plan is limited to a fixed amount set out in a collective agreement is proposed, the Superintendent may decide that the benefits of the members and former members of the exporting plan are not protected unless:
- (a) annuities are purchased; or
  - (b) the benefits are protected in some other way that is acceptable to the Superintendent.

### **Statements/Actuarial Reports**

#### Pension Plans that Provide Defined Benefits

13. For the purpose of sections 15, 16 and 17 below, the actuarial methods and assumptions used in preparing the solvency valuations for the exporting plans and the importing plan should be on a consistent basis. For example, the economic assumptions underlying the actuarial bases for the solvency valuations should not differ.

14. For the exporting plans, the applicant should include:
- (a) a statement prepared by the actuary, that in his/her opinion, the transfer ratio of each of the exporting plans is at least 1.0; or
  - (b) where (a) does not apply and the transfer ratio of the importing plan is less than 1.0, or where the importing plan indicates that special payments are required, report(s) for the exporting plans prepared in accordance with section 15 below.
15. (1) A report should be prepared for each of the exporting plans at the effective date of transfer by a person authorized under the Regulation under the PBA if any of the exporting plans has a transfer ratio of less than 1.0 and the transfer ratio of the importing plan is less than 1.0, or if the report for the importing plan indicates that special payments are required. Alternatively, a single consolidated report which includes information relating to each of the exporting plans may be prepared.
- (2) For each exporting plan, the report(s) should include a going concern valuation and a solvency valuation. In addition to the transfer ratio, the amount of any going concern unfunded liability and/or solvency deficiency and the amount of any special payments, including the amortization period, required to liquidate the going concern unfunded liability and/or solvency deficiency should be identified.
16. A report prepared for the importing plan at the effective date of transfer must be filed with the application. The report will be treated as a report for an ongoing plan and must meet the requirements of section 14 of the Regulation, and any other applicable section(s) of the Regulation. For example, the funding requirements for the normal cost and any amortization payments as determined in accordance with section 17 below must be identified.
17. (1) Where the report for the importing plan indicates that special payments are required, the scheduled amount of each monthly amortization payment should be no less than the sum of the corresponding scheduled amounts of the monthly special payments required for the exporting plans immediately prior to any asset transfers. The amortization period(s) should be shortened, if appropriate, and the final amortization payment(s) adjusted accordingly.
- (2) Except as permitted by subsection (3) below, payment(s) which are not less than the scheduled amount of the monthly amortization payments for the importing plan must be continued until the date on which the going concern unfunded liability and/or solvency deficiency identified for the importing plan at the effective date of transfer is fully amortized or otherwise liquidated.
- (3) Where an actuarial gain or solvency excess emerges after the effective date of any of the reports, the amortization payment schedule established in the applicable report may be adjusted in accordance with section 5(17) and sections 7(1) and (2) of the Regulation. For that purpose “original amortization period” in section 7(2) of the Regulation refers to the amortization period established in the report for the importing plan.

#### Pension Plans that Provide Defined Contribution Benefits

18. (1) For asset transfers from exporting plans that provide only defined contribution benefits to an importing plan that provides only defined contribution benefits, the applicant should include a statement that identifies the assets and liabilities of each exporting plan, determined as if each plan terminated at the effective date of transfer.
- (2) A report prepared at the effective date of transfer for the importing plan must be filed with the application. The report will be treated as a report for an ongoing plan.

### **Amendments**

19. (1) Amendments to the exporting plan(s) which provide for a transfer of assets and liabilities to the importing plan must be filed with the Superintendent. A fully restated plan text should generally be filed for the importing plan.
- (2) All filed amendments must comply with the PBA, the Regulation, the amending provisions and any other relevant provisions of the exporting plans or any prior plans, and any other documents required to be filed for any of those plans.
- (3) Amendments should also be consistent with any relevant FSCO policies. Particular attention should be paid to established policies under Series A400 (amendments) and Series A700 (asset transfers).

### **Retaining Information about the Members**

20. (1) The administrator of the importing plan should maintain a record of information about the exporting plan at the effective date of transfer. The information should be sufficient to identify all the members, former members and any other persons entitled to payment from the plan on the effective date of transfer and their respective benefits as at the effective date of transfer.
- (2) All information should be retained. At a minimum, the record of information about the exporting plan should include the names of the members, former members and any other persons, their respective benefits (including accrued pension benefits and ancillary benefits), their last known addresses at the effective date of transfer, and the market value of the assets, the going concern liabilities and the solvency liabilities of the plan.
- (3) Subsections (1) and (2) above also apply to the administrator of the importing plan with respect to the members, former members and any other persons entitled to a payment from the plan prior to any transfer of assets to the plan.

### **Notice**

21. For each exporting plan, prior to the date of application, the administrator should transmit individual written notice of the application by personal delivery or by regular mail to:
  - (a) each member, former member and any other person entitled to payment from the plan;
  - (b) each trade union that represents the members; and
  - (c) any advisory committee established in respect of the plan.
22. Notice should include:
  - (a) the name and registration number of the exporting plan;
  - (b) the effective date of transfer;
  - (c) the name and registration number of the importing plan;
  - (d) the names and registration numbers of the other exporting plans;
  - (e) an explanation of the proposed transfer of assets, including the transfer ratios of the exporting plan and the importing plan, and information concerning how benefits will be protected under the terms of the importing plan; and
  - (f) advice that comments on whether the proposal protects benefits may be submitted to the administrator and to the Superintendent within a forty-five (45) day period following receipt of the notice.

23. (1) Where the transfer is to a multi-employer pension plan, or to a pension plan that provides defined benefits where the obligation of an employer to contribute to the plan is limited to a fixed amount set out in a collective agreement, the notice should indicate that the transferred benefits may no longer be covered by the Pension Benefits Guarantee Fund, and may be subject to reduction in accordance with sections 14(2)\* or (3) of the PBA.

\* Applies to multi-employer pension plans established pursuant to a collective agreement or trust agreement.

- (2) Specific details about how the benefits will be protected in the importing plan under the circumstances determined in accordance with section 12 of this policy should be included in any explanation provided under clause 22(e) above.
24. The Superintendent may accept other forms of notice and/or methods of delivery under appropriate circumstances. Where another form of notice and/or method of delivery was used, the applicant should justify the need for alternative service.