



SECTION:	Assets
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TITLE:	Asset Transfer Resulting from Sale of Business - PBA ss. 25(1) and 78-80
APPROVED BY:	Superintendent of Financial Services
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Note: Effective January 1, 2014, the legislation governing asset transfers has changed. Asset transfer applications filed with FSCO prior to January 1, 2014, will be reviewed in accordance with this policy and the legislation applicable prior to January 1, 2014.

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.*

Transfer of Assets Resulting from Sale of a Business (formerly known as Policy Statement 2)

- (1) This policy is applicable to transfers made pursuant to agreements signed and transactions implemented on or after October 1, 1988.
- (2) In this part,
 - (a) "asset transfer ratio" shall mean the ratio of the market value of investments held by the employer's pension plan plus any cash balances and accrued or receivable income items to the sum of the transfer liabilities and the residual liabilities.
 - (b) "asset transfer value" shall be the transfer liabilities multiplied by the lesser of
 - (i) the asset transfer ratio or

- (ii) 1.00.
 - (c) “residual asset value” shall be the residual liabilities multiplied by the lesser of
 - (i) the asset transfer ratio, or
 - (ii) 1.00.
 - (d) “residual liabilities” are the higher of the going concern liabilities or the solvency liabilities of the pension, deferred pensions, ancillary benefits or pension benefits for which the employer has retained responsibility.
 - (e) “transfer liabilities” are the higher of the going concern liabilities or the solvency liabilities of the pension, deferred pensions, ancillary benefits or pension benefits for which the successor employer has assumed responsibility.
 - (f) “transferred members” shall mean those members, former members and persons entitled to a payment from a pension fund that are affected by the transfer and for whose accrued benefits in whole or in part the successor employer has assumed responsibility.
- (3) The Superintendent shall not permit a transfer of assets from a pension plan of an employer to a pension plan of a successor employer unless the application for transfer by the employer is accompanied by,
 - (a) those portions of the purchase and sale agreement and any subsequent revisions to that agreement which relate to the employer’s pension plans and pension funds; and
 - (b) a report prepared by a person authorized under section 15 of the Regulation containing the following information:
 - (i) the going concern liabilities, solvency liabilities and asset transfer value of the benefits for which the successor employer has assumed responsibility;
 - (ii) the going concern liabilities, solvency liabilities and residual asset value of the benefits for which the employer has retained responsibility;
 - (iii) where the plan is in a surplus position, the intended treatment of surplus and the basis for any allocation of the surplus; and
 - (iv) the amount of and the basis for the determination of the assets to be transferred to the successor employer’s pension plan.
- (4) The review date of the report required under paragraph (3) shall be the effective date of the sale.
- (5) Notwithstanding paragraph (4), the Superintendent may permit a review date of the report required under paragraph (3), other than the effective date of sale where the Superintendent is of the opinion that the other date is justified in the circumstances.

- (6) Prior to the proposed transfer of assets and liabilities from the employer's pension plan to the successor employer's pension plan, notice by the employer shall be transmitted to the transferred members. Where the transferred members are represented by a trade union that is a party to a collective agreement filed as a document that creates or support the pension plan, notice shall also be transmitted to the trade union, and the notice shall contain, at least, the following information:
- (a) the name of the employer's pension plan and its provincial registration number;
 - (b) the name of the successor employer's pension plan and its provincial registration number, if any;
 - (c) the review date of the report filed with the application;
 - (d) notice that copies of the report, filed with the Superintendent, in support of the transfer of asset request, excluding information as to the service, salary, pension benefits or other personal information related to any specific person without the persons' prior consent, are available for review at the offices of either the employer or the successor employer and information on how copies of the report may be obtained; and
 - (e) a description of the benefits of the transferred members for which the successor employer has assumed responsibility and a description of the benefits of the transferred members for which the employer has retained responsibility.
- (7) The Superintendent shall not permit a transfer of assets from a pension plan of an employer to a pension plan of a successor employer unless a certified copy of the notice referred to in paragraph (6) has been filed with the Superintendent together with a statement that paragraph (6) has been complied with, and indicating the last date the notice was transmitted.
- (8) Where a transaction described in section 80 of the PBA occurs, and the successor employer assumes responsibility in whole or in part for the pension benefits under the employer's pension plan, then,
- (a) where, under the wind up provisions of the plan, the employer has clear entitlement to surplus, subject to paragraph (1), assets having a market value as at the review date of not less than the lower of the asset transfer value or the solvency liabilities reported under paragraph (3)(b)(i) shall be transferred from the employer's pension plan to the pension plan of the successor employer;
 - (b) where, under the wind up provisions of the plan, the members and former members of the employer's pension plan have clear entitlement to the surplus of the employer's pension plan,
 - (i) assets having a market value as at the review date of not less than the asset transfer value reported under paragraph (3)(b)(i) shall be transferred from the employer's pension plan to the pension plan of the successor employer; and

- (ii) where a transfer of assets representing surplus is to be transferred from the employer's pension plan to the successor employer's pension plan, then,
 - (A) the successor employer shall maintain the transferred assets and liabilities as separate and distinct from any other pension plans which the successor employer may sponsor; or
 - (B) prior to the transfer of assets and liabilities, the proposed transfer of surplus shall be allocated to improve the accrued benefits of the transferred members on a basis acceptable to the Superintendent; or
 - (c) where, under the wind up provisions of the plan, the entitlement to surplus under the employer's pension plan is unclear,
 - (i) without prejudicing future determination of entitlement to surplus under the employer's pension plan, the employer may follow the procedure as provided for in paragraph 8(b);
 - (ii) without prejudicing future determination of entitlement to surplus under the employer's pension plan, the employer may apply to the Superintendent for a determination of whether the transfer shall be made according to the procedure as provided for in paragraph 8(a) or 8(b); or
 - (iii) subject to the approval of the Superintendent, a partial transfer of assets from the employer's pension plan to the successor employer's pension plan may be made on an interim basis until the requirements of paragraph (13), if applicable, are met.
- (9) Assets representing surplus attributable to the transferred members may remain in the employer's pension plan. The transferred members' entitlement to surplus in the employer's pension plan, if any, remains unaffected by the transfer.
- (10) The Superintendent shall refuse to consent to a transfer under paragraph (8)(a) if after such a transfer the market value of the assets remaining in the employer's pension plan as at the review date would be less than the lower of the residual asset value or the solvency liabilities reported under paragraph (3)(b)(ii).
- (11) The Superintendent shall refuse to consent to a transfer under paragraph (8)(b) if after such a transfer the market value of the assets remaining in the employer's pension plan as at the review date would be less than the residual asset value reported under paragraph (3)(b)(ii).
- (12) Notwithstanding paragraphs (8), (10) and (11), the Superintendent may, under exceptional circumstances, require or permit a transfer of assets determined using some other equitable basis.
- (13) Where a transfer of assets representing surplus is to be made from the employer's pension plan to the successor employer's pension plan, and the ratio of the assets transferred to the successor employer's pension plan to the assets retained in the employer's pension plan is

greater than the ratio of the transfer liabilities to the residual liabilities, then the transfer shall, for the purpose of this part, be treated as a surplus withdrawal and subject to the requirements of sections 78 and 79 of the PBA.

- (14) Paragraphs (3)(b), and (6)(c) and 6(d) shall not apply where the successor employer assumes all assets and liabilities of the employer's plan and maintains these assets and liabilities in a pension plan that is separate and distinct from any other pension plan that the successor employer may sponsor.
- (15) Where a member of the employer's pension plan is transferred to the pension plan of the successor employer, such member shall be deemed to be a person eligible to become a member of the successor employer's pension plan for the purpose of notification as required under section 25(1) of the PBA.
- (16) Where there is a transfer of asset and liabilities from the employer's pension plan to the successor employer's pensions plan, the administrator of the successor employer's pension plan shall file a report required under section 14 of the Regulation within 120 days following the date the transfer is approved by the Superintendent.
- (17) In the preparation of the reports required under paragraph (16), the successor employer may include as past service unfunded actuarial liabilities, the net increase in liabilities as a result of:
 - (a) benefit improvements granted to the transferred employees on the date they become members of the successor employer's pension plan; and
 - (b) the difference in going concern liabilities arising as a result of the differences in actuarial funding method or assumptions between the successor employer's pension plan and the employer's pension plan as reported in the last report filed under section 14 of the Regulation.
- (18) Paragraphs (16) and (17) shall not apply where the successor employer assumes all assets and liabilities of the employer's pension plan and maintains these assets and liabilities in a pension plan that is separate and distinct from any other pension plan that the successor employer may sponsor, and the successor employer shall make payments in accordance with the requirements of the most recent report filed under sections 3, 13 or 14 of the Regulation by the administrator of the employer's pension plan.
- (19) The Superintendent may waive any or all of the requirements of paragraphs (3)(b) and (4) through (18) where the amount of liabilities to be transferred to the successor employer does not, in the opinion of the Superintendent, represent a significant portion of the total liabilities of either the employer's pension plan or the successor employer's pension plan.