

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



SECTION: Assets

INDEX NO.: A700-250

TITLE: Asset Transfers under Section 81 - Superintendent's Consent Required

APPROVED BY: The Superintendent of Pensions

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REPLACES: M200-151 (Merger Policy)

Asset Transfers under Section 81 - Superintendent's Consent Required

1. 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 *Pension Benefits Act*, R.S.O. 1990, (the "Act"), the transfer is subject to section 81 of the Act. (Transfers from pension plans registered in other jurisdictions are subject to the legislation of the applicable jurisdiction.)
2. Where section 81 applies, no transfer of assets may be made without the prior consent of the Superintendent under either of subsections 81(4) or 81(8) of the Act. This policy has been developed to assist in the preparation of applications for the Superintendent's consent. The Superintendent will consider each application on a case-by-case basis.
3.
 - (a) 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 Act must be obtained in accordance with either of subsections 81(4) or 81(8) of the Act unless, the transfer is subject to subsection 80(10) of the Act.
 - (b) 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.
4. 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".)

5. The term "effective date of transfer" means the effective date of the amendment(s) which gives rise to the transfer(s) of assets from the exporting plan(s) to the importing plan.
6.
 - (a) "Transfer ratio" means a transfer ratio calculated in accordance with the transfer ratio definition under section 1 of the regulations under the Act (the "regulations"). Transfer ratios are calculated at the effective date of transfer.
 - (b) "Going concern valuation" means a valuation performed in accordance with the going concern valuation definition under section 1 of the regulations.
 - (c) "Solvency valuation" means a valuation performed in accordance with section 17 of the regulations.
 - (d) "Report(s)" for exporting plans that provide defined benefits are prepared in accordance with section 13 below.
 - (e) The "report" for the importing plan is prepared in accordance with sections 14 and 15 or section 17, as applicable.
7. In accordance with subsection 81(5) of the Act, the Superintendent shall refuse to consent to a transfer of assets that does not protect the pension benefits and any other benefits (the "benefits") of the members and former members.
8. 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 a going concern unfunded liability and/or a solvency deficiency exists, and the scheduled amount of the monthly special payments for the importing plan is less than the combined scheduled amounts of the monthly special payments required for the exporting plans.

The Application

9. 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.
10. The application should identify, by name and registration number, the exporting plans affected by the transfer proposal and the market value of assets to be transferred from each applicable exporting plan at the effective date of transfer.

Statements/Actuarial Reports

Pension Plans that Provide Defined Benefits

11. For the purpose of sections 13, 14 and 15 below, the actuarial methods and assumptions used in preparing the reports 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 reports should not differ.)
12. For the exporting plans, the applicant should include either:
 - (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 the statement under (a) is not included, or the report for the importing plan indicates that special payments are required to be made, report(s) for the exporting plans prepared in accordance with section 13 below.
13.
 - (a) A report should be prepared for each of the exporting plans at the effective date of transfer 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.
 - (b) 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.
14.
 - (a) 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 regulations. (For example, the funding requirements for the normal cost and any going concern unfunded liability and/or solvency deficiency must be identified.)
 - (b) In determining the solvency deficiency, if any, of the importing plan, the portion of the "solvency asset adjustment" (consisting of items (b), (c), and (d) in the definition under subsection 1(2) of the regulations) should take into account only those special payments required to amortize any going concern unfunded liability in the importing plan.
15.
 - (a) Where the report for the importing plan indicates a going concern unfunded liability and/or a solvency deficiency, the scheduled amount of the monthly special payments should be no less than the combined scheduled amounts of the monthly special payments required for the exporting plans. Appropriate adjustments should be made to the amortization period(s) and, if applicable, the special payments so that the present value of the special payments for the importing plan equal the going concern unfunded liability and/or solvency deficiency, as the case may be.
 - (b) Payment(s) which are not less than the scheduled amount of the monthly special 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.

Pension Plans that Provide Defined Contribution Benefits

16. For exporting plans, the applicant should include a statement that identifies the assets and liabilities of each plan,

determined as if each plan terminated at the effective date of transfer.

17. A report (cost certificate) 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 (cost certificate) for an ongoing plan.

Transfers to a Multi-Employer Pension Plan

18. Where a transfer of assets from a pension plan that provides defined benefits to a multi-employer pension plan that is established pursuant to a collective agreement or trust agreement (a "MEPP") 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.

Amendments

19. (a) 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.
- (b) All filed amendments must comply with the Act, the regulations, 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.
- (c) Amendments should also be consistent with any relevant policies of the Commission. Particular attention should be paid to established policies under Series A400 (amendments) and Series A700 (asset transfers).
20. (a) Where, in the opinion of the applicant, there is any doubt that the terms of an exporting plan restrict the employer's use of surplus in an ongoing plan and/or the employer does not have clear entitlement to surplus at wind up, 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 the affected persons and their respective benefits as at the effective date of transfer, if the importing plan is wound up. A copy of the information should be provided to each trade union that represents the members and/or former members of an exporting plan.
- (b) At a minimum, the record of information about the exporting plan should include the names of the members and former members, their respective benefits (including accrued pension benefits and ancillary benefits), the market value of assets, and the amount of the plan liabilities.

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 first class mail to:
- (a) each member and former member of the pension plan;
 - (b) each trade union that represents members of the plan; and
 - (c) any advisory committee established in respect of the plan.
22. Notice should include:
- (a) (i) the name and registration number of the exporting plan of the member or former member; or

- (ii) the name and registration number of the exporting plan to which the trade union or advisory committee relates;
 - (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.
 - (a) Where the transfer is to a MEPP, the notice should indicate that the transferred benefits may no longer be covered by the Pension Benefits Guarantee Fund and, generally, could be reduced in accordance with subsection 14(2) of the Act.
 - (b) Specific details about how the benefits will be protected in the MEPP under the circumstances determined in accordance with section 18 of this policy should be included in any explanation provided under clause 22(e) above.
- 24. A copy of the notice should be provided to the Superintendent along with a certification by the administrator of the date on which the last notice was transmitted, the persons or bodies to whom notice was transmitted, and the method of delivery of notice.
- 25. The Superintendent may accept other forms of notice under appropriate circumstances. Where another form of notice is contemplated, the applicant should justify the need for alternative service.

Proposals to Transfer a Portion of the Assets

- 26. Where an application is made under section 81 of the Act for the Superintendent's consent to transfer a portion of the assets of a pension plan, the application will be considered on the basis of this policy and Policy A700-200 (Asset Transfer Resulting from Sale of Business). These policies identify situations under which the Superintendent may decide that the benefits and any other benefits of the members and former members are protected. Appropriate modifications will be considered on a case-by-case basis. For more details please refer to Policy A700-225 (Superintendent Consent Required for Asset Transfer under subsection 81(8)).