
SECTION:	Assets
INDEX NO.:	A700-225
TITLE:	Superintendent Consent Required for Asset Transfer under subsection 81(8) (PBA, R.S.O. 1990)
APPROVED BY:	The Superintendent of Pensions
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Subsection 81(8) is applicable where a portion of the assets of one pension plan will be transferred to another plan and no sale, assignment or disposition has occurred.

Subsection 81(8) of the *Pension Benefits Act* (the "PBA") states:

> No transfer of assets shall be made from one pension plan to another pension fund in circumstances where subsections (1) to (7) do not apply or where section 42 or 80 does not apply, without the prior consent of the Superintendent or contrary to the prescribed terms and conditions and for the purpose, subsections (5) to (7) apply with necessary modifications. 1987, c. 35, s. 82(8)

<u>Subsections 81(1) to (7)</u>

The PCO Merger Policy (also referred to as M200-151 and published in the *PCO Bulletin* 4/2 [December 1993-January 1994, p. 8]) dated September, 1993, identifies conditions to be met in order to obtain the Superintendent's consent to a transfer of assets where subsections 81(1) to (7) apply. These subsections apply where all of the assets of one pension plan will be transferred to another plan and no sale, assignment or disposition has occurred.

<u>Sections 42 and 80</u>

Section 42 identifies the transfer options which must be provided, in specific circumstances, to an individual plan member who has terminated employment or plan membership and is entitled to a deferred pension at the date of termination. Under these circumstances, the Superintendent's consent to the transfer of the commuted value of the deferred benefit is normally not required unless subsection 19(4) or 19(10) of the regulations apply.

In accordance with section 80, no transfer of assets from one pension plan to another pension fund as a result of the sale, assignment or disposition of all or part of an employer's business, or all or part of the assets of an employer's business may occur without the prior consent of the Superintendent. PCO Policy Statement 2, (called "Asset Transfer Resulting from Sale of Business" and referred to as A700-200 on the BBS), dated July 18, 1988, identifies acceptable methods of allocating assets between the benefit liabilities of the plan members who are affected by the sale, assignment or disposition and the benefit liabilities that will be retained in the ongoing portion of the plan.

Obtaining Consent For Subsection 81(8) Transfers

Subsection 81(5) applies to asset transfers made under subsection 81(8). In accordance with subsection 81(5), 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 affected by the transfer.

In circumstances where an application for the Superintendent's consent to a transfer of assets must be made under subsection 81(8), the Merger Policy (M200-151) and Policy Statement 2 (A700-200) identify conditions under which the Superintendent would consider the members' and former members' benefits to be adequately protected as required by the PBA. These conditions apply with necessary modifications to applications for asset transfers under subsection 81(8) from pension plans registered in Ontario.

Reciprocal Transfer Agreements

Please note that by definition a "reciprocal transfer agreement" provides for the transfer of money or credits for employment or both in respect of individual members. Except as permitted under subsection 80(10), the Superintendent's prior consent to an asset transfer with respect to a group of individuals must be obtained in accordance with subsections 80(5) or 81(5) as applicable.

PCO Staff Comment: Please also see A700-251 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 s. 42 or s. 80 of the Act.

A700-251 is the replacement policy for A700-250 and the former Merger Policy, M200-151.