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Trust Issues on Pension Plan Asset Transfer

This Checklist is solely an analytical tool meant to expedite the asset transfer process. It is not intended as a tool to determine or assist in the determination of any legal entitlement to surplus and should not be considered or treated as such

1.

Do any of the pension plans that are the subject of the transfer application have a defined benefit component, or have any of them had such a component in the past?

If yes, go to question 2.

If no, go to question 8.

2.

Are any of the relevant pension funds currently, or was any predecessor fund at any time, subject to a trust?

If yes, go to question 3.

If no, go to question 8.

3.

Has a court of competent jurisdiction determined that the transfer of assets is permitted and have all rights of appeal been extinguished?

If yes, go to question 8.

If no, go to question 4.

FSRA is actively reviewing all FSCO regulatory direction, including but not limited to forms, guidelines and FAQs.

Until FSRA issues new regulatory direction, all existing regulatory direction remains in force.

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4.

For a spin-off plan, is the transfer being made from a single plan (the transferring plan) to a newly established "stand-alone" plan (the receiving plan) where all of the following conditions are met:
 (a) the transfer does not breach the current terms of the transferring plan and trust; (b) the terms of the trust governing the receiving plan are not materially different from those governing the transferring plan; and
 (c) a proportionate share of assets, including any surplus, is transferred to the receiving plan and the current surplus entitlement language under both plans is consistent?

If yes, go to question 8.

If no, go to question 5.

5.

Has the receiving plan undertaken, within the plan terms, to maintain the transferred assets separate and apart from the other assets of the plan (including an undertaking not to use any transferred assets to fund benefits unrelated to the transferred members)?

If yes, go to question 8.

If no, go to question 6.

6.

Does any current or predecessor trust agreement or plan document governing a plan's trust fund contain "exclusive benefit" language (i.e., that the trust fund must only be used for the benefit of employees and other beneficiaries)?

If yes, go to question 7.

If no, go to question 8.

7.

Did the trust agreement(s) or plan document(s), when it(they) first included the exclusive benefit language, also contain any of the following? Check all boxes for which the answer is yes.

- Language reserving the right of the employer/settlor to revoke the trust;
- Explicit language permitting mergers; or

Implicit language permitting mergers, such as a definition of "beneficiary", "member" or similar term, which includes reference to employees of "subsidiaries", "affiliates", "related parties" or a similar term, or

language which contemplates the participation of, or subsequent addition of employees of, "subsidiaries", "affiliates", "related parties" or a similar term;

If yes indicated in any of the boxes, go to question 8.

If no, go to question 9.

8.

The applicant should provide relevant supporting documentation and analysis and upon receipt, FSCO will continue to process the application.

9.

The applicant may make submissions on why the application should continue to be processed by FSCO.

APPLICANT'S CERTIFICATION

Employer: *Provide the correct legal name of the employer making the asset transfer application.*

Pension Plans: *Provide the full registered name of the pension plans and their respective registration numbers.*

Applicant: *Provide the name, title and business address of the corporate officer or agent authorized to act on behalf of the employer.*

I CERTIFY TO THE SUPERINTENDENT OF FINANCIAL SERVICES THAT:

(a) I, the individual making this certification, am the applicant or the authorized officer or agent of the applicant;

(b) I certify that, to the best of my knowledge and belief, based on the information and advice provided to me, the information contained in this Checklist is true, accurate and complete.

DATED this _____ day of _____, _____.
day month year

Signature of Applicant or Applicant's Agent or Signing Officer

Name of Applicant or Applicant's Agent or Signing Officer

It is an offence under the Criminal Code, R.S. 1985, c. C-46, as amended, for anyone to knowingly make a false document with the intent that it be acted on as genuine.

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