



SECTION:	Assets
INDEX NO.:	A700-226
TITLE:	Partial 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:	A700-225

This policy replaces A700-225 (Superintendent's Consent Required for Asset Transfers Under Section 81(8)) as of the effective date of this policy.

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.*

Note: Also see policy 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 section 42 or section 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 A700-251 (Full Asset Transfers under Section 81 - Superintendent's Consent Required).
2. 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 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 a partial 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, all or a portion of the assets of each 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 assets;
 - (c) going concern liabilities;
 - (d) going concern unfunded liability;
 - (e) going concern valuation;
 - (f) solvency assets;
 - (g) solvency deficiency;
 - (h) solvency liabilities;
 - (i) solvency liability adjustment;
 - (j) special payment;
 - (k) transfer ratio.

- (2) The meaning of the terms used in this policy which are not defined under the PBA or the Regulation is as follows:
- (a) “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;
 - (b) “reports” for exporting plans that provide defined benefits are prepared in accordance with sections 13 and 14 below;
 - (c) the “report” for the importing plan is prepared in accordance with sections 13, 15 and 16 below;
 - (d) “solvency excess” means the excess determined in accordance with section 5(17) of the Regulation;
 - (e) “transferred members” means those members and former members of an exporting plan who cease membership in the exporting plan and become members and former members of an importing plan as a result of a transfer of a portion of the assets and liabilities of the exporting plan to the importing plan;
 - (f) “transfer assets” means the market value of the assets transferred from an exporting plan to the importing plan as at the effective date of transfer;
 - (g) “residual members” means those members and former members of an exporting plan who are not transferred members, and who continue to be members and former members under the residual exporting plan;
 - (h) “residual exporting plan” means the remaining portion of each exporting plan after a portion of the assets and liabilities has been transferred;
 - (i) “residual assets” means the market value of the assets remaining in a residual exporting plan immediately following the transfer of the transfer assets;
 - (j) “reports” for residual exporting plans that provide defined benefits are prepared in accordance with sections 14 and 16 below.
 - (k) “solvency valuation” means a valuation performed in accordance with section 17 of the Regulation.

The Application

- 7. An application for the Superintendent’s consent to transfer a portion 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 transfer assets for 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 unless:
 - (1) for each exporting plan from which a portion of the assets and liabilities are to be transferred,
 - (a) where the solvency liabilities of the exporting plan are greater than or equal to the solvency assets of the plan, the ratio of the transfer assets to the residual assets is equal to the ratio of the solvency liabilities for the transferred members to the solvency liabilities for the residual members; or
 - (b) (i) where the solvency liabilities of the exporting plan are less than the solvency assets of the plan, the ratio of the transfer assets to the residual assets is equal to the ratio of the going concern liabilities for the transferred members to the going concern liabilities for the residual members, and
 - (ii) the transfer assets are not less than the solvency liabilities allocated to the transferred members, and
 - (iii) the residual assets are not less than the solvency liabilities allocated to the residual members; and
 - (2) the transfer ratio of the importing plan is at least equal to the highest transfer ratio of the exporting plans, but need not exceed 1.0; and
 - (3) the transfer ratio of each residual exporting plan is at least equal to the transfer ratio of the corresponding exporting plan, but need not exceed 1.0; and
 - (4) where the report(s) for the importing plan or any of the residual exporting plans indicates that special payments are required, and the sum of the scheduled amounts of

amortization payments for any month under the importing plan and the residual exporting plans is less than the sum of the corresponding scheduled amounts of monthly special payments required for all exporting plans immediately prior to any asset transfers, except as adjusted in accordance with section 16 below; and

- (5) no solvency liability adjustment is used in the solvency valuations of the exporting plans, the residual exporting plan(s), and the importing plan where the assets are transferred in the form of cash.
- 12. Where a transfer of a portion of the 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 transferred members 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 14, 15 and 16 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. (1) A report should be prepared for each of the exporting plans as at the effective date of transfer by a person authorized under the Regulation under the PBA.
- (2) A report for an exporting plan should identify:
 - (a) the market value of the assets;
 - (b) the going concern assets, going concern liabilities, solvency assets, and solvency liabilities of the plan as a whole;
 - (c) the transfer ratio;
 - (d) the going concern liabilities and the solvency liabilities in respect of the transferred members, if any;
 - (e) the going concern liabilities and the solvency liabilities in respect of the residual members, if any;
 - (f) the transfer assets, if any, and the method of determining the transfer assets; and
 - (g) 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 with respect to the exporting plan.

- (3) A separate report should be prepared for each of the residual exporting plans as at the effective date of transfer. Alternatively, a consolidated report which includes the results for the exporting plan and the results for its corresponding residual exporting plan may be prepared.
 - (4) The report for a residual exporting plan 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 special payments must be identified.
15. A report prepared for the importing plan as 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 16 below must be identified.
16. (1) Where the report(s) for the importing plan or any of the residual exporting plans indicates that special payments are required, the sum of the scheduled amounts of the amortization payments for the importing plan and the residual exporting plan(s) for each month should be no less than the sum of the corresponding scheduled amounts of the monthly special payments required for all exporting plans immediately prior to any asset transfers. The amortization period(s) for the importing plan and each residual exporting plan should be shortened, if appropriate, and the final amortization payment(s) adjusted accordingly.
- (2) Except as permitted by subsection (3) below, payments which are not less than the combined scheduled amounts of the monthly amortization payments for the importing plan and the residual exporting plan(s) must be continued until the date on which the going concern unfunded liability and/or solvency deficiency identified for the importing plan and the residual exporting plans 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 or the residual exporting plan, as the case may be.

Pension Plans that Provide Defined Contribution Benefits

17. (1) Where a transfer of a portion of the assets from a pension plan that provides only defined contribution benefits to another plan that provides only defined contribution benefits is proposed, the application should include a report for each exporting plan that identifies the market value of the assets of the plan, the liabilities in respect of the

transferred members, the transfer assets, the liabilities in respect of the residual members, and the residual assets, all determined as if each plan terminated at the effective date of transfer.

- (2) Reports prepared as at the effective date of transfer for the importing plan and for each residual exporting plan must be filed with the application. Each report will be treated as a report for an ongoing plan.
18. The Superintendent may decide that the benefits of the members and former members are not protected where:
- (a) the amount of the transfer assets is less than the amount determined by multiplying the market value of the assets of the exporting plan by the ratio of the liabilities in respect of the transferred members to the total liabilities of the exporting plan, or
 - (b) the amount of the residual assets is less than the amount determined by multiplying the market value of the assets of the exporting plan by the ratio of the liabilities in respect of the residual members to the total liabilities of the exporting plan.

Amendments

19. (1) Amendments to the exporting plan(s) and to the importing plan which provide for a transfer of assets and liabilities to the importing plan must be filed with the Superintendent.
- (2) All filed amendments must comply with the PBA, the Regulation, the amending provisions and any other relevant provisions of the exporting plans or the importing plan, 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 exporting plan should maintain a record of information about the transferred members and the residual members. 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 transferred members and the residual members, their last known addresses at the effective date of transfer, their respective benefits (including accrued pension benefits and ancillary benefits), the transfer assets, the residual assets, and the going concern and solvency liabilities for the transferred members and for the residual members. A record of the market value of the assets of

the exporting plan as at the effective date of transfer should also be retained.

- (3) Subsections (1) and (2) above also apply to the administrator of the importing plan with respect to:
- (a) the members, former members and any other persons entitled to a payment from the plan prior to any transfer of assets to the plan; and
 - (b) any transferred persons where the transfer assets exceed the solvency liabilities in respect of the transferred persons.

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 persons entitled to payment from the plan;
 - (b) each trade union that represents the members;
 - (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, the residual 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.
- (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 or method of delivery was used, the applicant should justify the need for alternative service.

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