

Policy Bulletin #9

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Plan Merger and Successor Employer Situations

The requirements of the *Employment Pension Plans Act* (the Act) with respect to the disposal of a business, and/or merger of two pension plans are covered, for the most part, in Part 5 of the Act and Part 5 of the *Employment Pension Plans Regulation* (the Regulation).

This Bulletin outlines the Act's requirements and filing guidelines with regard to successor employer situations, that is, where members of a pension plan are affected by a business transaction such as a sale or merger, or by an employer's merger or division of pension plans. Throughout the Bulletin we refer to predecessor and successor employers. If a merger is being considered between two plans of the same employer, please read the terms "predecessor and successor employer" as "predecessor and successor plan", the former being the plan to which the affected employees belong before the change and the latter the plan which the members are joining as a result of the change.

This Bulletin is a revision of a previous bulletin. It has no legal authority. The Act and Regulation should be used to determine specific requirements.

Act Provisions and Requirements

TREATMENT OF ASSETS AND LIABILITIES

Under section 80 of the Act and section 65 of the Regulation, a successor situation occurs when one employer, (the predecessor employer), disposes of all or part of his business to another employer, or merges with another employer (the successor employer), and the predecessor employer's employees become employees of the successor employer as a result of that business transaction. Where there is no successor employer pension plan for members to join, then the predecessor employer's plan is deemed terminated in respect of those members, and the procedures outlined in [Policy Bulletin #6 - Termination of a Pension Plan](#), must be followed.

Where the affected employees will continue to belong to a pension plan, there are six possible alternatives for the treatment of the funds accumulated and benefits accrued under the predecessor employer's pension plan. The first five alternatives apply if the successor employer is taking responsibility for the predecessor plan's assets and liabilities in respect of the affected employees. The sixth option is the only option available when the successor employer is not taking responsibility for those assets and liabilities.

1. The successor employer may assume responsibility for the pension plan of the predecessor employer and keep it operating (applies only if there are no plan members remaining in the employ of the predecessor employer). This is not really a "successor plan" situation – the predecessor plan is amended to change the identity of the employer / administrator, and if applicable, the name of the plan.
2. Assets and liabilities with respect to the members involved may be transferred to and merged with the successor employer's existing pension plan.
3. Assets and liabilities with respect to the members involved may be transferred to a newly established plan set up by the successor employer for those members.
4. Where the business transaction involves only part of the predecessor plan's membership, and the successor employer wishes to enroll the affected employees in another active¹ pension plan, the successor employer may transfer the assets and liabilities with respect to the affected members to a newly established but inactive plan containing the same terms as the predecessor plan. Accrued benefits are paid out from the inactive plan when the member terminates membership from the successor plan.
5. Where the successor employer is taking over responsibility for all of the assets and liabilities of the predecessor employer's pension plan but does not want to operate it as an active plan, the plan may be amended to make the successor employer the administrator and to make the plan inactive, but left otherwise unaltered. Accrued benefits are paid out when the member terminates membership from the successor employer's pension plan.
6. Where the successor employer does not assume responsibility for the predecessor plan's assets and liabilities with respect to affected members of the predecessor plan, a partial or full plan termination is declared with respect to the members involved.

¹ (excerpt from EPP Regulation, section 65): "'active plan' means a pension plan to which contributions will be made on a current basis and in which benefits in respect of future employment will accrue, and 'inactive plan' means a plan that is not an active plan;"

CONTINUOUS SERVICE FOR MEMBERS

Section 65(4) of the Regulation states that a transfer under these circumstances does not in itself bring about a break in service; therefore, service in both plans is combined for the purposes of determining eligibility for membership or benefits, vesting and locking-in under both pension plans. In the case of Option 6, the members' rights in the predecessor plan are governed by the rights of plan members on termination of their pension plan. The successor plan must, nevertheless, count service with the predecessor employer as continuous service for the above purposes.

TRANSFER OF ASSETS

Without the prior written consent of the Superintendent, the assets of a pension plan may not be transferred, as would occur in Options 2 through 5, (section 65(8) of the Regulation), or released on plan termination, as would occur in Option 6, (section 77 of the Act).

Filing Requirements

ALL OPTIONS

Regardless of which option is chosen, the following four items must be filed with the Superintendent as applicable:

1. A copy of the relevant sections of the sales / transfer agreement related to the pension plan.
2. An amendment to the successor employer's plan to recognize continuous employment with the predecessor employer for the purposes of determining eligibility in the successor employer's plan as well as vesting and locking-in.
3. If applicable, a partial plan termination report in respect of those members whose employment is being terminated as a result of the sale or merger.
4. Where the predecessor plan is compulsory and the successor plan is voluntary, transferring members may be offered a one-time option to opt out of the plan. A partial termination report must be filed in respect of these members.

OPTION 1

Where the successor employer is assuming responsibility for the predecessor employer's pension plan, the plan must be amended to recognize the change in corporate ownership. This normally includes a change to the definition of "employer", a change in the plan's name, and a change to the funding agreement to recognize the new employer name. Also, if the successor employer has other pension plans, a provision may be added to allow movement from one plan of the employer to another without termination of membership.

If it is not specifically covered in the sales / transfer agreement, the companies involved must also file a resolution transferring responsibility for the assets and liabilities of the plan from the predecessor employer to the successor.

OPTION TWO

The predecessor employer must file

1. a transfer actuarial valuation outlining the basis for valuing benefits, and a list of all affected plan members which includes each member's respective;
 - (a) name;
 - (b) date of hire and date of enrolment in the plan;
 - (c) value of employee required contributions;
 - (d) value of employer required contributions (defined contribution pension plans only);
 - (e) accrued monthly pension (defined benefit plans only);
 - (f) commuted value of the accrued pension (defined benefit plans only);
 - (g) value of employee additional voluntary and/or optional ancillary contributions, if any; and
 - (h) notation of those members employed in other provinces.

2. a statement as to the interest to be credited on benefits to the date of transfer;
3. if the predecessor employer's pension plan is continuing for other members a revised cost certificate showing the change in costs as a result of the sale (defined benefit plans only);
4. unless it is specifically covered in the sales / transfer agreement, a signed resolution agreeing to the transfer of funds; and
5. a copy of the information letter or notice given to affected members regarding the transfer.

The successor employer must file

1. an amendment to the successor pension plan recognizing the transfer of funds and preserving benefits and entitlements accrued under the predecessor plan for those members whose funds have been transferred;
2. unless it is specifically covered in the sales / transfer agreement, a resolution agreeing to assume the assets and liabilities in respect of the transferred members; and
3. a revised cost certificate reflecting the change in costs, assets and liabilities resulting from the merger (defined benefit plans only).

OPTION THREE

The predecessor employer's responsibilities are as per Option 2.

The successor employer must file a new pension plan document for registration that recognizes the transfer of funds and preserves benefits and entitlements under the predecessor plan for employees affected by the business transaction. In addition, the successor employer must file items 2 and 3 under Option 2.

OPTION FOUR

Under Option 4, benefits under the newly established inactive plan may be suspended in respect of the transferring members until such time as the respective members terminate membership in the successor employer's pension plan. Both employers must file certain documents to accommodate such an event.

The predecessor employer must file the documents required of a predecessor employer under Option 2.

The successor employer must file

1. an application for registration of the new inactive plan (for further information please consult [Policy Bulletin #2 - Registration of a Pension Plan](#))
2. an amendment to the successor plan stating that there is an additional benefit to be provided from the inactive plan with respect to service with the predecessor employer; and
3. a revised cost certificate reflecting the change in costs resulting from the transfer (defined benefit plans only).

The administrator must continue to file Annual Information Returns, valuations and Cost Certificates for as long as a suspended plan remains in operation. Although current service contributions are not being made into the plan, special payments may be required if the plan shows a funding or solvency deficiency.

Where the plans are ultimately terminated and wound-up, the successor plan is not considered to have surplus assets unless and until all liabilities in both the active and inactive plans have been fully discharged.

OPTION FIVE

The filing requirements for predecessor and successor employers are similar to Option 4, except that the successor employer, instead of an application for registration of a new pension plan, will be filing an amendment changing the name of the employer/administrator and making the plan inactive.

OPTION SIX

Where the successor employer is not assuming responsibility for the predecessor plan's assets and liabilities with respect to the affected employees, the predecessor pension plan is terminated, in full or in part. The predecessor employer must file a standard termination report and other required documents, as outlined in [Policy Bulletin #6 - Termination of a Pension Plan](#).

Special Considerations

1. DISCLOSURE

Regardless of which option is being chosen it is important that members are made aware of exactly what is happening to their accrued benefits. This may be done through meetings, information letters or other means of communication.

From the predecessor:

- (a) The predecessor employer shall provide to affected members a statement explaining how the successor situation will affect their benefits.
- (b) Where assets are transferring to another plan, members should receive an Annual Statement updated to the date of transfer.

From the successor:

- (a) An up-to-date copy of the employee booklet

In addition the Superintendent may require either employer to provide such additional information as he deems necessary for the members (of the predecessor, plan successor plan or both) to be fully informed with respect to the impact of the transfer (e.g. a significant change in the solvency status of some or all of the benefits).

Where a full or partial plan termination is being declared, the termination statement required by section 22 of the Regulation must also be provided. Under Options 4 and 5, the successor employer must ensure that annual and other statements to employees previously employed by the predecessor employer include information about the inactive plan.

2. TRANSFER OF ASSETS AND PRESERVATION OF FUNDED STATUS (Defined Benefit Provisions)

The transfer valuation for defined benefits transferring, as outlined in Option 2 (and by reference in Options 3, 4 and 5), should normally use the same basis for valuing benefits as that used in the ongoing valuation of the predecessor plan. Where the successor employer's plan is valuing ongoing benefits using more liberal assumptions, and those assumptions have been approved by the jurisdiction in which the successor plan is registered, the transfer valuation may use the successor employer's assumptions for determining the value of benefits to be transferred.

The transfer valuation should not use assumptions that are unrelated to either the successor or predecessor plan or are more liberal than both plans thereby resulting in an undermining of the funded status of transferring benefits or those remaining in the predecessor plan.

The amount of assets to transfer from the predecessor plan to the successor plan is as follows:

- Where the predecessor plan has a going concern funded ratio of less than 1.0, the value of assets to transfer is to be prorated according to the going concern position of the predecessor plan as it existed immediately prior to the transfer.
- Where the predecessor plan has a going concern funded ratio of more than 1.0, the value of assets to transfer to the successor plan is 100% of the value of the going concern liability of the affected plan members.

The amount transferred from the predecessor to the successor plan may be greater than this amount; however, the going concern funded ratio of the predecessor plan must be maintained. Any amount transferred above 100% would be negotiated and agreed upon between the two plans and would be subject to the excess/surplus asset provisions of the plan.

The transfer valuation for the predecessor plan must value the assets and liabilities in respect of the remaining members of that plan. Any new solvency deficiencies identified "post asset transfer" would be subject to the normal 5-year amortization period.

The transfer valuation for the successor plan (or, the initial valuation report in a plan spin-off) must value assets and liabilities as though the transfer had already been made. Once again, newly established unfunded liabilities and solvency deficiencies are subject to the normal 15 and 5-year amortization periods.

3. TREATMENT OF ASSETS IN EXCESS OF LIABILITIES

There is no requirement under the Act to transfer assets greater than the value of the going concern liabilities in respect of the affected members, unless

1. the terms of the predecessor pension plan (i.e. the current or any historic plan text documents, or trust agreements) specifically state otherwise, or
2. an agreement is negotiated between the predecessor and successor employers requiring such a transfer,

If assets in excess of liabilities are transferred (on either a partial plan mergers / spin-off) OR where excess assets exist on a full plan merger, the following must be taken into consideration.

- If it is contractually clear that the excess assets belong to the employer, then, subject to Act requirements, the employer(s) may deal with the excess as they see fit,
- If, however, there is any doubt as to the permitted use of those funds, special provisions must be made to ensure that transferring members do not lose any entitlement. Such provisions may include:
 - Notional accounting / tracking of the excess assets, thereby ensuring that those funds and related investment earnings are used only for the benefit of transferring members, or
 - The plan sponsor may choose to go to court to have a determination made in respect of the permitted use of those assets

The surplus provisions of the predecessor employer's pension plan must be considered when there is a full disposal of a business. For details on this, please refer to [Policy Bulletin #4 - Removal of Funds from Pension Plans](#).

Conclusion

As with any action taken with respect to a registered pension plan, the primary concern under the Act is to ensure that member's accrued benefits and entitlements are preserved and that the requirements of the Act are met.

For further information, please contact

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