

**Predecessor and Successor Plans and Employers*****Reference: Pension Benefits Regulation – Part 8***

Part 8 of the *Pension Benefits Regulation* sets out the rules that apply when an employer who contributes to a pension plan sells or otherwise disposes of all or part of the employer's business and the employer's employees become employees of the person acquiring that business. The primary objective is to ensure that the accrued benefits and entitlements of those persons who are affected are preserved and that the requirements of *The Pension Benefits Act* and regulation are met. This Bulletin outlines the requirements and filing guidelines for successor situations. If a transfer is being considered between two plans of the same employer, the terms used in this Bulletin are to be read as the context requires.

**GENERAL REQUIREMENTS**

Under Part 8 of the regulation, a successor situation occurs when

- (a) one employer, (the predecessor employer), who contributes to a plan sells, assigns or otherwise disposes of all or part of
  - i. the employer's business or undertaking, or
  - ii. the assets of the employer's business or undertaking; and
- (b) in conjunction with (a), an employee who is a member of the plan becomes an employee of the successor employer.

If the successor employer does not assume responsibility for the accrued benefits of the predecessor plan, the employee continues to be entitled to the pension and other benefits provided under the predecessor plan in respect of the period of membership in the predecessor plan, without further accrual.

If the successor employer assumes responsibility for the accrued benefits of the predecessor plan, the superintendent's prior written consent is needed before any assets and liabilities are transferred to a plan of the successor employer.

**Accrued Benefits and Entitlements**

The sale, assignment or disposition does not in itself effect or result in a break in or cessation of employment or plan membership for purposes of the Act and regulation. An employee's employment is deemed to include his or her employment both with the predecessor employer and successor employer, without interruption for purposes of determining

- (a) the length of employment for purposes of any eligibility condition under the successor plan, and
- (b) whether the employee is entitled to a benefit under the predecessor plan or the successor plan.

### **Notice to Persons Affected**

The administrator of the predecessor plan must give every person affected by the sale, assignment or disposition written notice and provide a copy of that notice to the superintendent within 60 days after giving it to the persons affected. The written notice should as a minimum include:

- (a) the name and registration number of the predecessor plan;
- (b) the proposed date of the merger;
- (c) the name and registration number of the successor plan;
- (d) an explanation of the proposed merger and transfer of assets and information concerning how the merger would affect the benefits of members, and other plan beneficiaries entitled to receive benefits from a predecessor plan; and
- (e) advise that comments may be submitted to the administrator within a forty-five (45) day period following receipt of the notice.

If assets and liabilities are being transferred from the predecessor plan to another plan, active members should receive a statement in accordance with section 3.33, Annual statement, that meets the applicable requirements of Schedule A (Statements) of the regulation, updated to the date of transfer.

The administrator of the successor plan, newly established or existing, must give every affected person affected an up-to-date plan summary in accordance with section 3.32 of the regulation.

In addition the superintendent may require either plan administrator to provide such additional information as the superintendent deems necessary for the affected persons to be fully informed of the effect the transfer (e.g. a significant change in the solvency status of some or all of the benefits).

If a full or partial plan termination is being declared under the predecessor plan, a statement in accordance with section 3.34, Statement on termination of active membership, must also be provided.

### **Information required to be filed**

Regardless of whether or not the successor employer assumes responsibility for the accrued benefits of the predecessor plan, the following documents must be filed as applicable:

1. The administrator of the predecessor employer's plan must
  - (a) file a copy of the relevant provisions of an agreement respecting the disposition of the employer's business, undertaking or assets that relate to the pension plan or the provision of pension and other benefits to the affected employees.
  - (b) provide any other information, or prepare and file reports about the plans or any part of the plans, in the manner and containing the information the superintendent requires.

2. If the successor employer assumes responsibility for the accrued benefits of the predecessor plan, the administrator of the predecessor plan
  - (a) must file a resolution of the employer's board of directors or similar body (or other document acceptable to the commission), authorizing the assumption of responsibility; and
  - (b) if the assets and liabilities respecting the affected members are to be transferred to the successor employer's existing or newly established plan, must file a report prepared by a person authorized under section 4.10 (who may conduct review) and must be acceptable to the superintendent respecting the members, showing the following:
    - i. the value of the assets and liabilities;
    - ii. the basis for valuing pensions and other benefits;
    - iii. the names of affected members showing their respective accrued benefit;
    - iv. a statement of the interest to be credited on benefits to the date of the transfer;
    - v. any surplus, and its intended allocation;
  - (c) must provide any other information, or prepare and file reports about the plans or any part of the plans, in the manner and containing the information the superintendent requires;
  - (d) must file an amendment to the successor plan to recognize employment both with the predecessor employer and successor employer, without interruption for purposes of determining the length of employment for purposes of any eligibility condition under the successor plan, and whether the employee is entitled to a benefit under the predecessor plan or the successor plan.
  
3. If the successor employer assumes responsibility for the accrued benefits of the predecessor plan, but assets are not transferred to an existing or newly established plan of the successor employer, the administrator must file
  - (a) a resolution of the employer's board of directors or similar body (or other document acceptable to the commission), authorizing the assumption of responsibility; and
  - (b) an amendment to the pension plan text and trust agreement to change the name of the employer, administrator, and pension plan name, as applicable.

## **SPECIAL CONSIDERATIONS**

Where the successor employer is not assuming responsibility for the accrued benefits of the predecessor plan, Part 8 of the regulation requires that the employee continues to be entitled to pension and other benefits provided under the predecessor plan in respect of the period of membership in the predecessor plan, without further accrual.

However, if there is no successor plan under which the affected employees are eligible to join the predecessor employer may terminate the predecessor plan, in whole or in part. As well as the documents and information outlined above, the administrator of the predecessor plan must file a termination report as outlined in [\*Policy Bulletin #9 - Termination and Winding Up of Plans\*](#).

### **Transfer of Assets and Preservation of Funded Status (Defined Benefit Provisions)**

The transfer valuation for defined benefits should normally use the same basis for valuing benefits as that used in the ongoing valuation of the predecessor plan. Where the successor 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 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.

### **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

- (a) the terms of the predecessor plan (i.e. the current or any historic plan text documents, or trust agreements) specifically state otherwise, or
- (b) 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 plan must be considered when there is a full disposal of a business. For details on this, please refer to *Policy Bulletin #6 - Payment of Surplus from Pension Plans*.

### **Who to contact for information**

If you have any questions regarding this bulletin please contact:

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*This bulletin has no legal authority. The Pension Benefits Act of Manitoba and the Pension Benefits Regulation 39/2010 should be used to determine specific requirements.*