



SECTION: Merger of Plans

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TITLE: General Procedures For Plan Mergers -
PBA, 1987 ss. 27(1), s. 82*

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The *Pension Benefits Act, 1987* (the "PBA") does not specifically address mergers of pension plans in circumstances where two or more plans of one employer or of related employers are combined and administered as one plan. Staff have adopted the position that where a pension plan merger occurs, it results in the establishment of a new successor plan to each of the merging plans. Successor plans are dealt with under section 82 of the PBA, 1987.

Accordingly, the transfer of assets from each of the merging plans to the successor plan requires the approval of the Superintendent under subsection 82(4). Moreover, under subsection 82(5), the Superintendent must refuse to consent to a transfer of assets from any of the merging plans "that does not protect the pension benefits and any other benefits of the members and former members" of a plan whose assets are being transferred.

The requirements for the consent of the Superintendent where there are underfunding or plan surplus issues are dealt with in this notice.

When plan mergers are proposed, the Superintendent will require as a condition of consent, that funding levels for all members are protected in the successor plan and that employees' entitlement to surplus in any merging plan are not adversely affected.

General Conditions for Pension Plan Mergers

The following apply generally to all plan merger circumstances:

- (a) the merger cannot be contrary to the terms of any of the merging plans;
- (b) the amendment to the merging plans which creates the successor plan must be effected in accordance with amending provisions in the respective merging plans; and
- (c) no accrued pension benefits of any member shall be reduced as a result of the merger.

Conditions in Under-Funded Situations

If a plan merger has occurred, the funded ratio in the successor plan on a **solvency basis** must not be less than that of the highest of the plans being merged - but need not exceed 1.00. This will ensure that a member's pension benefits are not at increased risk because of underfunding in the merged plan. In the event the successor plan is fully funded, the member is considered to be adequately protected.

Although it is preferred that the successor plan will be funded, if necessary, by a cash infusion, other funding situations for the successor plan consistent with existing funding situations for the merging plans will be considered on their merits.

Conditions In Surplus Situations

- a) If surplus ownership and entitlement are clearly attributable to the employer in the plans to be merged, the Superintendent will grant consent to the transfer of assets without regard to the existence of surplus in one or more of the plans.
- b) Where surplus ownership and entitlement are clearly attributable to the employees in a merging plan, the surplus may not be used for the benefit of members of another pensions plan through the successor plan, unless the plan so provides.
- c) Where there are inconsistencies in the provisions of the plans to be merged and the successor plan regarding any provision which adversely or potentially adversely affects the rights of members including:
 - entitlement to surplus;
 - the right of the employer to take contribution holidays; or
 - the amendment of the plan

regard must be had for recent Court decisions concerning the status of the pension plan as a trust, and as to the rights of employees to surplus in merged plans. In some circumstances, it may be necessary to make application to the Court for a variation in trust with respect to one or more of the merging plans.

General Procedures for Effecting Plan Mergers

- a) It is advisable that any potential problems with the proposed merger, relevant to the jurisdictions of the Superintendent or the Commission, be discussed with staff as early in the process as possible. Matters for discussion may arise as a result of the administrative practice or otherwise. It is helpful to staff to obtain a written summary of the situation including, for instance, background notes, objective and identification of problems prior to meetings or discussions.
- b) A merger is effected by amendments of the merging plans. Plan amendments should be filed with a fully restated plan text for the continuing plan and an accompanying explanatory letter. Supporting actuarial reports will also be required in the case of a merger involving a defined benefit plan. Actuarial assumptions of the merging plans and the successor plan used to determine solvency ratio or the existence of surplus must be consistent with each other.
- c) Notice of a plan merger must be given to members of the plans that are to be merged, unless notice is waived by the Superintendent. It will be necessary to give notice to plan members and retirees as provided under subsection 27(1) of the PBA, 1987 where an amendment is adverse or potentially adverse.

Discretion of the Superintendent

Notwithstanding the foregoing requirements for consent, the Superintendent may consent to a transfer of assets relating to a plan merger of pension plans where he is satisfied that the pension benefits and other benefits of the plan members and former members of the merging plans are protected in the circumstances.

*PBA, R.S.O. 1990 ss. 26(1), s. 81

Policy no longer in force. See also A700-251.