



SECTION: Merger of Plans

INDEX NO.: M200-151

TITLE: Merger Policy - September 1993
- PBA, 1990 s. 81, O. Reg. 909 s. 7

APPROVED BY: The Superintendent of Pensions

PUBLISHED: Bulletin 4/2 (December 1993 - January 1994)

EFFECTIVE DATE: September 16, 1993

REVISED DATE: November 23, 1995 [No longer applicable - replaced by A700-250, A700-251]

The PCO takes the position that a merger of two or more pension plans ("predecessor plans") creates a "successor plan". Therefore, the transfer of assets from a predecessor plan into a successor merged plan requires the prior consent of the Superintendent of Pensions in accordance with subsection 81(4) of the *Pension Benefits Act*, R.S.O., 1990 (the "PBA").

In accordance with subsection 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 of the predecessor plans or that does not meet the prescribed requirements and qualifications.

This merger procedure establishes conditions under which the Superintendent would consider the members' and former members' benefits to be adequately protected as required by the PBA. The conditions apply with respect to asset transfers from plans registered in Ontario.

The conditions outlined in this procedure apply to each predecessor plan prior to the merger and the successor plan after the merger. The conditions should be interpreted in accordance with the terms of the PBA and the regulations under the PBA. An application which meets all of the conditions identified under the merger procedure will be processed in a summary manner. Other applications will be considered on a case-by-case basis. The merger procedure is set out in five parts as follows:

Part A General Filing/Reporting/Notice Requirements

Part B Conditions Applicable to All Pension Plans That Provide Defined Benefits

B.1 Requirement to Obtain a Court Order

B.2 Funding Requirements to be Met Under the Successor Merged Plan

Part C Conditions Applicable to the Merger of a Single-Employer Pension Plan that Provides Defined Benefits with a Multi-Employer Pension Plan

Part D Conditions Applicable to Defined Contribution Pension Plans

Part E Discretion of the Superintendent

A General Filing/Reporting/Notice Requirements

- 1.(a) An amendment to the predecessor plans which creates the successor plan should be filed along with a fully restated plan text for the successor plan.
- (b) The amendment to a predecessor plan which creates the successor plan must not be contrary to the amending provisions or any other relevant provisions of the documents of the predecessor plan or any documents related to the plan.
2. A letter of application for the Superintendent's consent to the asset transfer(s) with respect to the merger should be filed with all of the documents required to be filed or submitted in accordance with this policy. The letter should identify the predecessor plans affected by the merger proposal and also identify the value of the assets to be transferred from each predecessor plan at the proposed date of merger.
- 3.(a) A report as at the proposed date of merger (a "merger report") should be prepared and filed for each of the predecessor plans which provide defined benefits. Each report should include a going concern valuation, a solvency valuation, and a wind up valuation. The amount of any going concern unfunded liability or solvency deficiency and the special payments required to liquidate the going concern unfunded liability or solvency deficiency should be identified.
- (b) A merger report should also be prepared and filed for the successor plan. It should include a going concern valuation, a solvency valuation, and a wind up valuation. The report will be treated as a valuation report for an ongoing plan. Accordingly, the funding requirements for the normal cost and going concern unfunded liability and solvency deficiency should be identified.

Where the merger report on the successor plan indicates a going concern unfunded liability or a solvency deficiency or both, the total monthly rate of special payments should not be less than the total of the monthly special payments required to be made in respect of each of the predecessor plans as indicated in the merger reports under paragraph 3.(a) above, with an appropriate adjustment to the amortization periods for such special payments so that their present value will equate to the going concern unfunded liability or solvency deficiency, as the case may be.

In determining the solvency deficiency, if any, of the successor plan, the portion of the "solvency asset adjustment" which consists of items (b), (c) and (d) in the definition in the Regulations should recognize only those special payments required to amortize any going concern unfunded liability in the successor plan.

- (c) In preparing the reports required under paragraphs 3.(a) and (b) above, the method of valuing the assets and liabilities with respect to each of the predecessor plans and the successor plan must be on a consistent basis.
- (d) A merger valuation report prepared for a predecessor plan which provides defined contribution benefits should identify the assets and liabilities of the plan, determined as if the plan terminated at the date of merger.

4. With respect to each predecessor plan, individual written notice of the proposed merger should be transmitted to:
- a) each member of the pension plan;
 - b) each former member and any other person who at the date of merger is entitled to receive a payment from the pension plan;
 - c) each trade union that represents members of the plan; and
 - d) any advisory committee established in respect to the plan.

When considered appropriate in the circumstances, the Superintendent may approve other forms of notice for those persons or bodies listed above.

A copy of the notice should be provided to the Superintendent, along with a certification of the date on which the last such notice was transmitted.

At a minimum, the information contained in the notice should include:

- i) the name of the predecessor plan;
- ii) the proposed date of the merger;
- iii) the name of the successor plan;
- iv) an explanation of the proposed merger and transfer of assets and information concerning how the merger would affect the benefits of members, former members and other persons entitled to receive payments from a predecessor plan including information related to how the benefits would be protected under the terms of the successor plan (where the transfer is to a multi-employer pension plan, notice that the benefits would no longer be covered by the Pension Benefits Guarantee Fund should be provided); and
- v) advice that comments may be submitted to the administrator and the Superintendent within a forty-five (45) day period following receipt of the notice.

B Conditions Applicable to All Pension Plans That Provide Defined Benefits

Pension benefits accrued to the date of merger and any ancillary benefits at the date of merger shall not be less under the provisions of the successor plan.

B.1 Requirement to Obtain a Court Order

Where the wind up valuation of a merger report for a predecessor plan discloses a surplus, a court order in relation to the predecessor plan should be obtained. The order should indicate that:

- a) the employer is entitled to apply an actuarial gain to reduce employer contributions for normal costs in accordance with subsection 7(3) of the Regulations under the PBA,
- b) the plan provides for payment of surplus to the employer on the wind up of the plan, and
- c) the plan permits merger.

Where any plan or plan-related documents have been or are to be amended in relation to surplus, this should be brought to the court's attention when the order is sought so that any issues concerning the legality of such amendment(s) can be considered simultaneously by the court.

Advance written notice of the court application made in order to satisfy the above conditions should be given to:

- i) the Superintendent, and
- ii) those persons and bodies entitled to notice of the proposed merger pursuant to section 4 of Part A above.

Where an employer is already in possession of a court order which satisfies the above conditions, disclosure of the declaration made by the court must be included in the notice under section 4 of Part A.

A copy of the court order should be included as part of the application.

B.2 Funding Requirements to be Met Under the Successor Plan

Funded Ratio Requirement

On the completion of the transfer of assets from the predecessor plans, the funded ratio in the successor plan must not be less than the funded ratio of the highest funded ratio of the predecessor plans, but need not exceed 1.0.

For the purposes of B.2, the funded ratios should be determined from the wind up valuations in the merger reports.

C Conditions Applicable to the Merger of a Single-Employer Pension Plan that Provides Defined Benefits with a Multi-Employer Pension Plan that Provides Defined Benefits

Where assets are to be transferred from a plan which is a **single-employer pension plan that provides defined benefits** to a successor plan which is a **multi-employer pension plan that provides defined benefits and that is established pursuant to a collective agreement or a trust agreement**, the following conditions apply:

- i) the requirements of B.1 apply to each single-employer pension plan,
- ii) the requirements of Part A shall apply to each single-employer pension plan;
- iii) with respect to the multi-employer pension plan, paragraph 3.b) of Part A shall not apply and, instead of the

restated plan text required under paragraph 1.a) of Part A), an appropriate amendment to the plan should be filed; and

- iv) where the bargaining agent(s) for a predecessor plan does not represent all of the members and former members of the plan, the Superintendent may consider that the pension benefits and other benefits of the members and former members who are not represented by a trade union are protected where annuity purchases are made or where the multi-employer pension plan contains a provision which requires that the pension benefits and other benefits to which those unrepresented persons are entitled at the date of merger under the predecessor plan will be fully funded in the multi-employer pension plan while the plan continues and on plan termination.

D Conditions Applicable to Defined Contribution Pension Plans

- 1. Where surplus exists at the proposed date of merger in a predecessor plan which is a defined contribution plan, B.1 applies to the application for consent to the transfer of assets with respect to that particular predecessor plan.
- 2. Where paragraph 1 above does not apply, only the conditions under Part A should be satisfied.

E Discretion of the Superintendent

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