Summary of the Draft Regulation

This draft regulation relates to amendments made to the *Pension Benefits Act* (PBA) as part of Bill 236, the *Pension Benefits Amendment Act, 2010*, which was passed unanimously by the Legislature in May 2010.

The Ministry encourages interested stakeholders to provide constructive comments on the draft regulation with a view to ensuring that it will facilitate the restructuring of pension plans affected by corporate restructuring in either the public or private sector, including the sale of a business, while protecting benefit security for plan members and pensioners.

Once implemented, the amendments should allow more efficient and timely transactions and simplify the regulatory approval process. This in turn should reduce administrative and compliance costs as well as help plan members to consolidate pension benefits in a single plan.

Note: This draft regulation does not address the 2013 Ontario Budget commitment to make amendments "that would permit assets to be transferred from employer-sponsored, single-employer plans to jointly sponsored pension plans (JSPPs) and allow employer-sponsored, single-employer pension plans to be converted to JSPPs, if specified conditions are met".

The PBA amendments:

- allow the pension benefits of transferring employees to be different in the new plan while protecting the commuted value of their accrued benefits by requiring any part of such value, not transferred to the successor plan be paid to the member;

    - The commuted value is the amount of a lump sum payment payable today that is deemed to be equal in value to a future series of pension payments. (The proposed regulation specifies that the commuted value calculation be made as if the member's employment terminated on the effective date of transfer. For this purpose, the commuted value would include the value of "grow-in" benefits, i.e., enhanced early retirement benefits.)

- do not allow any changes to the pension benefits of former members, retired members and other beneficiaries transferred to a new plan;

- require a prescribed amount of surplus, if applicable, to be transferred to the successor plan; and

- allow the employers that are parties to the sale of a business to give individuals the choice of consolidating their pension benefits in the new plan or leaving the accrued benefit in the old plan (where the latter plan remains ongoing).

The Draft Regulation:

- provides a formula, based on the original plan's solvency ratio, to determine the amount of assets to be transferred;

- protects the benefit security for members in both the original and successor plans by, for example,

  - ensuring that the original plan would not be less well funded on a solvency basis after a transfer than it was before the transfer; and
  - restricting the extent to which the funded status of a successor plan could be affected;

- does not allow transfers if the successor plan would allow accrued benefits to be reduced in circumstances that were not allowed in the original plan;

- requires the transfer of a proportional amount of surplus, if any, related to the liabilities being transferred;

- requires detailed notices to be sent to the affected members, former members and retired members of the plans, as well as to any trade unions or advisory committees that represent them, before an application to transfer assets is sent to the regulator; and

- sets out timelines to encourage the timely completion of these transactions.

None of these rules would preclude plan sponsors from making additional contributions to either of the plans to satisfy the conditions (subject to federal tax rules).

Outline of the proposed application and approval process:

After the effective date of transfer (e.g., date of sale of a business):

- within 90 days of the effective date of transfer, distribute notices regarding transfer to members, retired members, unions, etc.
- within 180 days of the effective date of transfer, file application with the Superintendent of Financial Services
- Superintendent consents to the transfer of assets if all required conditions are met
- within 60 days of Superintendent consent, original plan transfers assets to successor plan
- within 60 days of transfer, original and successor plans file statements of compliance with the regulator

The transfer would then be complete.