

Regulatory Registry Posting: Transfer Agreements Under Section 80.1 of the Pension Benefits Act

Background

Bill 236, the *Pension Benefits Amendment Act, 2010*, and Bill 120, the *Securing Pension Benefits Now and for the Future Act, 2010*, which received Royal Assent on May 18, 2010 and December 8, 2010, respectively, made comprehensive reforms to the *Pension Benefits Act* (PBA).

These reforms include amendments that facilitate asset transfers and the consolidation of pension benefits when groups of pension plan members are affected by corporate restructurings, including the sale, assignment or disposition of a business to a successor employer. Until the regulations required to enact these reforms are in place, asset transfers in relation to pension benefits continue to be based on existing legislative requirements, the impact of court decisions and regulatory policy.

Bill 236 also added section 80.1 to the PBA (see Appendix), providing transitional measures so that certain public sector plans can choose to negotiate agreements to give eligible employees an opportunity to consolidate their pension benefits in relation to past government-initiated restructurings.

Bill 173, the *Better Tomorrow for Ontario Act (Budget Measures), 2011*, further amended s. 80.1. The intention was to allow these agreements to extend the opportunity to consolidate pension benefits to individuals who ceased active membership in the successor plan on or after May 18, 2010, the date Bill 236 received Royal Assent.

This posting outlines the intended content of the regulations that are required for s. 80.1 to come into effect. With this information, the prescribed plans that wish to negotiate transfer agreements should be able to begin the process while comprehensive asset transfer regulations are developed.

Application of s. 80.1

Section 80.1 addresses certain circumstances in which organizational restructuring in the public and broader public sector resulted in groups of employees transferring from one employer to another without provision being made to permit consolidation of their pension benefits in the successor plan.

Section 80.1 provides a temporary framework to allow (but not require) administrators of the following pension plans (to be listed in the regulation) to negotiate transfer agreements that offer eligible employees the option of

consolidating their pension benefits from the original plan with their pension benefits in the successor plan (provincial registration numbers also listed):

- Healthcare of Ontario Pension Plan (346007)
- OMERS Primary Pension Plan (345983)
- Ontario Public Service Employees' Union Pension Plan (1012046)
- Public Service Pension Plan (208777)
- VON Canada Pension Plan (315937)

Additional plans may be added to the list as a result of this consultation.

Transfer Agreements

The framework under s. 80.1 allows the administrators of the original and successor plans to enter into one or more agreements authorizing eligible employees to elect to transfer the value of their accrued pension benefits in the original plan to the successor plan. There is no requirement for the successor plan to provide the same benefits as the original plan.

Eligible employees are those who are employed by the successor employer on the day s. 80.1 comes into force, or whose employment with the successor employer or whose membership in the successor pension plan ended on or after May 18, 2010 (and before the date on which s. 80.1 comes into force). An agreement can provide the election option to either or both of these groups of eligible employees. Individuals who retired from the original plan are not included in these groups of eligible employees.

The proposed regulation would not prescribe the detailed terms of the transfer agreements, which would be negotiated by the administrators of the original and successor plans. These administrators would also be responsible for establishing how to determine the amount of assets to be transferred. Copies of any transfer agreements must be filed with the Superintendent of Financial Services before assets can be transferred in connection with an eligible employee's election to consolidate pension benefits (see s. 80.1(9)).

This approach is similar to that used in some recent cases involving transfers of Ontario government employees to the federal public service. It is also similar to the way in which reciprocal transfer agreements are established regarding transfers of individual employees.

This temporary framework for transferring assets to consolidate pension benefits will expire on July 1, 2015. Transfers must be completed before that date.

Disclosure Requirements

Eligible employees must be given sufficient information to be able to compare the pension benefits and ancillary benefits and other non-pension post-retirement benefits that they currently have in both the original and successor plans with the pension benefits and other benefits they would have if they elect to consolidate pension benefits in the successor plan. The information needed to make this comparison should enable eligible employees to make informed decisions.

For the purposes of this section, pension benefits would include pensions in pay.

The plan administrators would be required to provide eligible employees, at a minimum, with the information listed below, with explanations if appropriate.

Both the original plan and the successor plan would disclose to the eligible employee, regarding his or her pension benefits:

- name and date of birth as they appear in the plan's records
- the name of the pension plan and its provincial registration number
- normal retirement date, earliest unreduced retirement date, and earliest retirement date
- spouse's name as it appears in the plan's records, if applicable
- beneficiary's name as it appears in the plan's records
- pension benefit formula, and details of how the pension benefit is calculated, and, if applicable, details of integration with a pension payable under the *Canada Pension Plan* or the *Old Age Security Act (Canada)*, and the reduction or increase to the pension benefit as a result
- pension benefits and ancillary benefits payable at each of the earliest retirement date, earliest unreduced retirement date, and normal retirement date, as applicable
- formula for reduction for early retirement
- any bridging benefit or special allowance and the date it ceases to be paid
- any indexation provisions applicable
- assumptions used to calculate the projected pension benefits as of a specified date
- details of any death benefits provided by the plan other than those required under s. 44 or s. 48 of the PBA

The original plan would disclose to the eligible employee, regarding his or her pension benefits:

- date of joining the pension plan and years of credited service in the plan used to calculate the pension benefit
- employee contributions with interest, if any
- expected pension benefits calculated as of a specified date, if there is no election to consolidate pension benefits in the successor plan

- lump sum value of the pension benefit, as determined by the transfer agreement

The original plan would also disclose to the eligible employee details of other non-pension post-retirement benefits provided by the original employer (e.g., dental / healthcare insurance) that are conditional on receiving pension benefits from the original plan and that the eligible employee would no longer receive if the pension benefits are consolidated in the successor plan.

The successor plan would disclose to the eligible employee, regarding his or her pension benefits:

- the amount of pension benefit and credited service received if the employee chooses to transfer the pension-related benefits from the original plan to the successor plan, as determined by the transfer agreement
 - options available if, after pension benefits are consolidated, the amount transferred from the original plan does not provide equivalent pension service in the successor plan; e.g., service purchase
- the deadlines for eligible employees to exercise options, e.g., 60 days after receipt of statement
- expected pension benefits and other benefits from the successor plan calculated at a specified date, if pension benefits are consolidated in the successor plan

Other Provisions to be Prescribed

The administrators of the pension plans participating in the transfer agreement would be required to obtain the written permission of eligible employees before any necessary information may be shared for the purposes of the transfer agreement.

A copy of the transfer agreement would be made available to any eligible employee, or his or her authorized agent, who makes a request in writing.

The administrators of the plans participating in the transfer agreement would be required to give reasonable notice to any bargaining agents representing the eligible employees and to provide copies of the transfer agreement to those bargaining agents.

For the purposes of s. 80.1, the effective date of the transfer of assets would be included in the transfer agreement and would be no earlier than May 18, 2010.

When eligible employees elect to consolidate their pension benefits in the successor plan, upon completion of the transfer of assets the original plan's obligations to the eligible employees cease.

The consent of an eligible member's spouse, if any, would be required before a transfer of assets can be completed.

If an eligible employee does not make an election, pension benefits would not be consolidated in the successor pension plan.

The plans participating in the transfer agreement would be required to file with the Superintendent of Financial Services an actuarial valuation report or cost certificate as of a specified date, as applicable, when the transfers are completed.

Comments

This proposal has been posted for a 45 day public review and comment period starting July 4, 2011. If you have any questions, or would like to submit your comments, please do so by August 18, 2011 addressed to the office listed under "Contact". Additionally, you may submit your comments on-line.

Please Note: All comments and submissions received will become part of the public record. You will not receive a formal response to your comment. However, relevant comments received as part of the public participation process for this proposal will be considered.

Appendix –Section 80.1 of the Act

The following is a consolidated version of s. 80.1 of the *Pension Benefits Act*, as it would read once proclaimed.

Transition, transfers upon the sale of a business

Interpretation

80.1 (1) In this section,

“original employer” means the employer who sells, assigns or otherwise disposes of all or part of the employer’s business or all or part of the assets of the employer’s business; (“premier employeur”)

“original pension plan” means the original employer’s pension plan; (“premier régime de retraite”)

“sale of the business” means the sale, assignment or other disposal referred to in subsection (2) of all or part of a business or all or part of the assets of the business; (“vente de l’entreprise”)

“successor employer” means the person who acquires the business or the assets of the original employer; (“employeur subséquent”)

“successor pension plan” means the successor employer’s pension plan; (“régime de retraite subséquent”)

“transfer agreement” means the agreement described in subsection (4). (“accord de transfert”)

Application

(2) This section applies if both of the following criteria are satisfied:

1. Before the day on which this section comes into force, an employer who contributes under a pension plan (or on whose behalf another person or entity makes contributions under a pension plan) sells, assigns or otherwise disposes of all or part of the employer’s business or all or part of the assets of the employer’s business to another person or entity.
2. The pension plan is in a prescribed class of pension plans or is a prescribed pension plan.

Eligible employees

(3) This section applies with respect to employees of the original employer who were members of the original pension plan and who, in connection with the sale of the business, become the successor employer’s employees and members of the successor pension plan.

Transfer agreement

(4) The administrator of the original pension plan and the administrator of the successor pension plan or such other persons as may be prescribed may enter into one or more agreements,

- (a) authorizing eligible employees who are employed by the successor employer on the day this section comes into force to elect to transfer the value of their accrued pension benefits under the original pension plan to the successor pension plan;
- (a.1) authorizing eligible employees whose employment with the successor employer or whose membership in the successor pension plan terminated

- on or after May 18, 2010 and before the date on which this section comes into force to elect to transfer the value of their accrued pension benefits under the original pension plan to the successor pension plan;
- (b) transferring to the successor employer the responsibility for providing pension benefits and other benefits under the original pension plan for all or any of the transferred members;
 - (c) authorizing the transfer of assets from the original pension plan to the successor pension plan in connection with this transfer; and
 - (d) establishing the manner of determining the amount of assets to be transferred.

Same

(4.1) A transfer agreement may authorize the election described in clause (4) (a) or (a.1) or in both clauses.

Same, employers

(5) A person or entity required to make contributions on behalf of the original employer or the successor employer, as the case may be, under the employer's pension plan may enter into the transfer agreement on behalf of that employer.

Same, eligible employees

(6) The transfer agreement cannot authorize individuals to elect to make the transfer described in clause (4) (a) or (a.1) if they are retired members of the original pension plan at the time the election is to be made.

Same, benefits

(7) Clause (4) (b) does not require the successor pension plan to provide the same pension benefits and other benefits for the transferred members that were provided for them under the original pension plan.

Same, prescribed requirements

(8) The transfer agreement must satisfy such requirements as may be prescribed.

Duty to transfer assets

(9) The administrator of the original pension plan shall transfer assets to the successor pension plan in accordance with the transfer agreement if all of the following criteria, and such other criteria as may be prescribed, are satisfied:

1. The transfer agreement must be filed with the Superintendent before the assets are transferred.
2. The transfer agreement must establish the manner of determining the amount of assets to be transferred.
3. Eligible employees must have been given notice of their right, under the transfer agreement, to elect to transfer the value of their accrued pension benefits and the ancillary benefits for which they have met the eligibility requirements to the successor pension plan, and the notice must satisfy such requirements as may be prescribed.
4. The eligible employees who elected to make this transfer must have made their election in accordance with the transfer agreement and in accordance with such other requirements as may be prescribed.

Repeal

(10) This section is repealed on July 1, 2015.