

Interpretive Guideline #19 Successor Situations

Issued: October, 2015

This guideline is designed to outline the requirements applicable in successor employer/plan situations as required by provisions of the [Employment Pension Plans Act](#) (Act) and the [Employment Pension Plans Regulation](#) (Regulation). This guideline summarizes the legislative requirements that apply to the subject matter, and includes (as applicable) additional details to outline the Superintendent of Pensions (the Superintendent) expectations and requirements where such authority has been provided by the Act and Regulation. Finally, the guideline outlines best practices and policies that the Superintendent expects from provincially regulated pension plans.

The Act and Regulation should be used to determine specific legislative requirements. Any legal authority of this Guideline rests in the areas in which the legislation delegates authority to the Superintendent to accept a proposal or action.

What is a Successor Situation	A successor situation occurs when either: <ul style="list-style-type: none">• an employer decides to merge two or more pension plans that he sponsors into one plan or split one plan into two or more plans, or• some or all of a business is purchased by another company and the pension plan of the purchased employer is taken over by the purchaser or merged into the existing plan of the purchasing employer.
Legislative Reference	<p>Act <i>Restrictions on transfer of assets</i> 74(1) Assets of a pension plan must not be transferred from the plan to another plan unless:</p> <ul style="list-style-type: none">a) the transfer is made under section 57(4) or 89(1) or (3), under Division 8 or under Part 9,b) the transfer is effected under an agreement referred to in section 35(6) (c), or the written consent of the Superintendent is obtained. <p>Prescribed rules apply to predecessor and successor plans 110 The rules prescribed for the purposes of this section apply if a prescribed event or transaction results in there being:</p> <ul style="list-style-type: none">a) predecessor and successor pension plans, orb) predecessor and successor employers in relation to one or more pension plans. <p>Rights of members on transfer of membership to another plan 111 If a member of a pension plan has his or her membership transferred to another pension plan in the circumstances set out in</p>

section 110 and:

- a) the assets and liabilities of the predecessor plan that relate to the member are transferred to a successor plan, the member's years of employment with the predecessor employer and the member's years of membership in the predecessor plan are deemed to be years of employment with the successor employer and years of plan membership in the successor plan, or
- b) there are predecessor and successor plans in circumstances other than those referred to in clause (a), years of employment and years of plan membership must be applied to one or both of those plans in the prescribed circumstances, for the prescribed purposes and in the prescribed manner.

Regulation

Definitions

95 In this Division,

- a) "predecessor employer" means a participating employer in the predecessor plan;
- b) "predecessor plan" means the first pension plan referred to in section 96;
- c) "successor employer" means a participating employer in the successor plan;
- d) "successor plan" means the second pension plan referred to in section 96;
- e) "transferred members" means the members referred to in section 96.

Application

96 This Division applies if all or an identifiable group of members of one pension plan become members of another plan due to an event or transaction referred to in section 97.

Prescribed events or transactions

97 This Division applies if:

- a) all or part of an employer's business, undertaking or assets is to be disposed of;
- b) pension plans of the same or different employers are to be merged;
- c) assets and liabilities of a pension plan applicable to an identifiable group of members of the plan are to be transferred out of a plan to establish a new plan of the same or different employers;
- d) another event is to occur that the Superintendent considers may result in an identifiable group of members of one pension plan becoming members of another pension plan.

Transfer of assets and liabilities between predecessor and successor plans

98(1) The administrator of a pension plan to which an event or transaction referred to in section 97 applies may transfer assets or liabilities of the predecessor plan to the successor plan if:

- a) the administrator files a written application for consent to the transfer,
- b) the administrator provides to the Superintendent, with the application,
 - i. an actuarial valuation report and cost certificate required under section 48(6), completed as at the effective date of the event or transaction, or a certification by the reviewer that the event or transaction does not materially affect the cost of benefits provided by the plan,
 - ii. a statement identifying the assets and liabilities of the predecessor plan that are to be transferred to the successor plan,
 - iii. a statement indicating the number of members of the predecessor plan who are to become members of the successor plan, and
 - iv. any other record or information required by the Superintendent,
- and
- c) the Superintendent has consented in writing to the transfer.

(2) If, in conjunction with an event or transaction referred to in section 97, the assets and liabilities of a predecessor plan are to be transferred to a successor plan, the administrator of the predecessor plan may, but is not required to, transfer any actuarial excess in the predecessor plan to the successor plan.

Required filings

99 If an event or transaction referred to in section 97 would result in an identifiable group of members entitled to receive benefits from a predecessor plan becoming members entitled to receive benefits from a successor plan, the administrator of the successor plan must file in relation to the successor plan the following:

- a) if the successor plan has been registered under section 14 of the Act,
 - i. an actuarial valuation report and cost certificate required under section 48(6) of this Regulation, completed as at the effective date of the event or transaction, or
 - ii. a certification by the reviewer that the event or transaction does not materially affect the cost of benefits provided by the plan;
- b) any other record or information required by the Superintendent.

Disclosure

100(1) If, in conjunction with an event or transaction referred to in section 97, the assets and liabilities of a predecessor plan are transferred to a successor plan, the administrator of the successor plan must, within 30 days after receiving the Superintendent's consent under section 98(1)(c), disclose the following to each of the members referred:

- a) a summary of the event or transaction;
- b) a description of the effect of the event or transaction on the member's benefits and entitlements.

(2) If, in conjunction with an event or transaction referred to in section 97, the successor employer acquires all or part of a predecessor employer's business, undertaking or assets but no assets and liabilities of the predecessor plan are transferred to the successor plan, the administrator of the predecessor plan must, within 30 days after the effective date of the event or transaction, disclose the following to each member of the predecessor plan who has become a member of the successor plan:

- a) a summary of the event or transaction;
- b) a description of the impact that the event or transaction has on the member's benefits and entitlements.

Membership rights on occurrence of event or transaction

101(1) If an event or transaction referred to in section 97 occurs that does not result in the transfer of an active member's membership in the successor plan, the member is, if he or she becomes an employee of the successor employer as a result of that event or transaction, immediately entitled to become an active member of the successor plan.

(2) If an event or transaction referred to in section 97 occurs as a result of which an employee of the predecessor employer becomes an employee of the successor employer, the employee's years of employment with the predecessor employer are deemed to be years of employment with the successor employer for the purposes of determining his or her entitlement under section 29 of the Act to become a member of the successor plan.

General Considerations

When a plan is split into two or more plans or a plan is merged with another plan, the general goal is that the funded status of transferring benefits should be maintained and neither plan should gain or lose as a result of the transaction.

The successor plan must recognize service with the predecessor for purposes of eligibility even if assets and liabilities are not being transferred.

Successor Plan Requirements

If a plan sponsor decides to split an existing pension plan into two or more plans (e.g. splitting a plan for all employees into separate plans for hourly and salaried employees) the following steps must be taken.

1. Registration of the successor plan. Funds cannot be transferred from the predecessor plan until the successor plan is registered. See Interpretive Guideline #6 for registration requirements. If the new plan is a benefit formula provision the actuarial valuation must reflect the assets and liabilities being transferred from the predecessor plan.
2. If assets and liabilities related to the transferring members are to be transferred to the successor plan then these must be identified and the appropriate report filed with the Superintendent.
 - In the case of a defined contribution provision the report should

- indicate the number of members being transferred, distinguishing between actives and deferreds if applicable, and should state the total assets to be transferred.
- In the case of a Benefit Formula provision, an actuarial valuation is required for the predecessor plan indicating:
 - a) the number of active members to be transferred and, if applicable, the number of deferred members and pensioners to be transferred
 - b) the amount of assets and liabilities to be transferred,
 - c) the cost and funding impact on the predecessor plan.
 - If the benefit type in the successor plan is different than what members accrued under the predecessor plan, documents related to a plan conversion must be filed with the Superintendent.
3. If assets and liabilities are not to be transferred to the successor plan but are to remain in the predecessor plan:
- if the predecessor plan has a benefit formula provision that the transferring members participate in, a revised actuarial valuation for the predecessor plan must be filed, (note that this valuation must take into consideration any salary increases to be applied to the accrued benefits as required by the plan text document),
 - the administrator must confirm that there is a tracking system in place so that when members terminated from the successor plan they also receive their termination statement for benefits held under the predecessor plan.

In all cases, a copy of the information provided to members explaining what is happening to their benefits should be filed with the Superintendent.

Successor Employer Situations

Where one employer purchases some or all of the business of another employer there are several options for the treatment of the predecessor employer's pension plan.

1. If the successor purchases the entire business of the predecessor
 - a) the successor may assume responsibility for and continue the predecessor plan,
 - b) if the successor already sponsors a pension plan for his employees the predecessor plan may be merged into the successor employer's pension plan
 - c) the successor may refuse to assume responsibility for the predecessor plan in any form in which case the predecessor plan must be terminated by the predecessor employer.
2. If the successor purchases only part of the business of the predecessor
 - a) if the successor already sponsors a pension plan the assets and liabilities related to the transferring employees who are members of the predecessor plan may be transferred to the successor plan
 - b) the successor may establish a new pension plan for the transferring members and once the plan is registered, transfer the assets and liabilities related to those members into the new

- plan,
- c) the successor may refuse to assume responsibility for the benefits accrued under the predecessor plan by transferring members, in which case the predecessor employer may
 - i. if there is a successor plan that members will join, suspend membership in the predecessor plan until the individual member terminates membership in the successor plan, or provide termination benefits to the transferring members,
 - ii. if there is no successor plan that the members will join the employer must provide the transferring members with termination benefits.

When filing documents with the Superintendent the rules indicated above with respect to successor plans apply. In addition, the following should be noted:

- If the successor is assuming the predecessor plan, all that is required is an amendment to the plan text document and the fundholder agreement changing the name of the plan sponsor. In addition, if the administrator is someone other than the new plan sponsor, the name and contact information of the new administrator must be filed with the Superintendent.

In all cases, a copy of the information provided to members explaining what is happening to their benefits should be filed with the Superintendent.

Treatment of Excess Assets and Surplus

There is no requirement in the legislation to transfer excess assets from the predecessor plan to the successor plan but such a transaction is permitted.

When making such a transfer, the following should be considered:

- Who owns excess/surplus under the terms of the predecessor plan text document?
 - i. If ownership is clearly with the plan sponsor, then funds can be transferred without concern, however, the same rules for maintaining a contingency reserve in the predecessor plan as apply on excess refund would be required.
 - ii. If ownership is unclear or clearly rests with the members then the amount or excess transferred should not exceed the amount attributable to the transferring members.
- If the predecessor plan is being terminated then the rules governing surplus application on plan termination apply (see IG #9)

For further information please contact:	
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