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NATIONAL PENSION SCHEME (OCCUPATIONAL PENSIONS) ACT 1998

1998 : 36

NATIONAL PENSION SCHEME (GENERAL) AMENDMENT REGULATIONS 2004

The Minister of Finance, in exercise of the powers conferred by section 69 of the National Pension Scheme (Occupational Pensions) Act 1998, makes the following Regulations:

Citation

1 These Regulations may be cited as the National Pension Scheme (General) Amendment Regulations 2004.

Insertion of new Part VI

2 The National Pension Scheme (General) Regulations 1999 are amended by inserting next after Part V the following new Part—

"PART VI
ACTUARIAL AND FUND MANAGEMENT

A - INTERPRETATION

Interpretation

39 (1) In this Part—

"actuarial gain" means the sum, if positive, at the valuation date of a going concern valuation, of—

(a) the gain or loss to a pension plan during the period since the immediately preceding report prepared in accordance with regulation 50(1) or 51(1) of the increase or decrease in the value of the assets of a pension plan, less the liabilities of the plan during the period determined in a going concern valuation of the plan resulting from the difference between actual experience and the experience expected by the actuarial assumptions on which that valuation was based;

(b) the amount by which the going concern liabilities increase or decrease as a result of an amendment to the plan other than an amendment that provides benefits for employment prior to the date of the amendment where the employment had not previously been recognised for purposes of the provision of pension benefits; and

(c) the amount by which the going concern liabilities increase or decrease or the going concern assets increase or decrease as a result of a change in actuarial methods or assumptions upon which the current going concern valuation is based;

"actuarial loss" means the sum, if negative, at the valuation date of a going concern valuation, of—

(a) the gain or loss to a pension plan during the period since the immediately preceding report prepared in accordance with regulation 50(1) or 51(1) of the increase or decrease in the value of the assets of a pension plan less the liabilities of the plan during the period determined in a going concern valuation of the plan resulting from the difference between actual experience and the experience expected by the actuarial assumptions on which that valuation was based;

(b) the amount by which the going concern liabilities increase or decrease as a result of an amendment to the plan other than an amendment that provides benefits for employment prior to the date of the amendment where the employment had not previously been recognised for purposes of the provision of pension benefits; and

(c) the amount by which the going concern liabilities increase or decrease or the going concern assets increase or decrease as a result of a change in actuarial

methods or assumptions upon which the current going concern valuation is based;

"ancillary benefits" means the benefits referred to in section 29 of the Act;

"annuity contract" means an annuity contract, issued by an issuer registered under the Insurance Act 1978 or any other person approved by the Commission, which is purchased in discharge or in full settlement of a pension or benefit under a registered pension plan;

"asset transfer ratio" means the ratio of—

(a) the market value of investments held by the employer's pension plan plus any cash balances and accrued or receivable income items; to

(b) the sum of the transfer liabilities and the residual liabilities;

"asset transfer value" means the transfer liabilities multiplied by the lesser of—

(a) the asset transfer ratio; and

(b) 1.00;

"book value", in relation to an asset, means the cost of acquisition to the person acquiring the asset, including all direct ancillary costs associated with the acquisition;

"carrying value" means a reasonable estimate of market value;

"effective date of transfer" means the effective date of the amendment which gives rise to the transfer of assets and liabilities from an exporting plan to an importing plan;

"escalated adjustment" means an adjustment that is made to a pension or a deferred pension of a former member of a pension plan where—

(a) the adjustment is not capable of being determined with certainty at the time the plan or a relevant amendment to the plan is submitted for registration because the adjustment is related to the investment earnings of the pension fund or to future changes in a general wage or price index; or

(b) the adjustment is an increase in the pension or deferred pension at a fixed annual percentage rate specified in the plan;

"exporting plan" means each pension plan from which an asset and liability transfer to an importing plan is proposed;

"going concern assets" means the value of the assets of a pension plan including accrued and receivable income determined on the basis of a going concern valuation;

"going concern liabilities" means the present value of the accrued benefits of a defined benefit provision of a pension plan determined on the basis of a going concern valuation;

"going concern unfunded liability" means the amount, if any, by which the sum of the going concern liabilities exceeds the going concern assets;

"going concern valuation" means a valuation of assets and liabilities of a defined benefit provision of a pension plan using methods and actuarial assumptions considered by the actuary who valued the plan to be in accordance with the Standards of Practice of the Canadian Institute of Actuaries, or a corresponding British or American equivalent that may be approved by the commission, for the valuation of a continuing pension plan;

"importing plan" means the pension plan to which the assets and liabilities will be transferred;

"initial valuation date" means the valuation date of the first report filed or submitted following the coming into operation of these regulations;

"market value" means the most probable price that would be obtained for property in an arm's length sale in an open market under conditions requisite to a fair sale, the buyer and seller acting prudently, knowledgeably and willingly;

"normal cost" means the cost of pension benefits and ancillary benefits with respect to a fiscal year of a pension plan determined in accordance with the methods and actuarial assumptions used in a going concern valuation;

"past service unfunded liability" means the amount of going concern unfunded liability that results from the provision of benefits with respect to employment prior to the effective date of the pension plan or from an amendment to a plan that provides benefits for employment prior to the date of the amendment where the employment had not previously been recognised for purposes of the provision of pension benefits;

"prospective benefit increase" means an increase to a pension benefit or ancillary benefit set out in the pension plan or agreed to by the parties to a collective agreement, but not yet in effect;

"report" unless otherwise specified means a report prepared by an actuary;

"residual asset value" means the residual liabilities multiplied by the lesser of—

(a) the asset transfer ratio; and

(b) 1.00;

"residual liabilities" are the greater of—

(a) the going concern liabilities; and

(b) the solvency liabilities;

of the pensions, deferred pensions, ancillary benefits or pension benefits for which the employer has retained responsibility;

"solvency assets" means the market value of investments held by a pension plan plus any cash balances of the plan and accrued or receivable income items of the plan, excluding the value of any qualifying annuity contract of the plan;

"solvency deficiency", means the amount by which the sum of the solvency liabilities exceeds the sum of the solvency assets, as of the valuation date of a report;

"solvency excess" means the amount by which the sum of the solvency assets exceed the sum of the solvency liabilities as of the valuation date of a report;

"solvency liabilities", in relation to a report, means the liabilities of a pension plan determined as if the plan had been wound up on the valuation date of the report, but excluding liabilities for—

(a) any escalated adjustment;

(b) prospective benefit increases; and

(c) future salary increases;

"solvency valuation" means a valuation performed in accordance with regulation 51(3);

"special payment" means a payment or one of a series of payments determined for the purpose of liquidating a going concern unfunded liability or solvency deficiency in accordance with regulations 40(1) and 40(2);

"surplus" in respect of a defined benefit provision of —

(a) an ongoing pension plan means the amount by which the assets of the plan exceed the liabilities of the pension plan where—

(i) the assets of the plan are calculated on the basis of the market value of the investments held by the fund plus any cash balances and accrued or receivable items;

(ii) the liabilities of the plan are calculated to be the greater of the going concern liabilities and the solvency liabilities; and

(b) a pension plan that is or is being wound up means the amount by which the assets of the plan exceed the solvency liabilities where the assets of the plan are calculated on the basis of the market value of the investments held by the fund plus any cash balances and accrued or receivable items;

"transfer liabilities" are the greater of—

(a) the going concern liabilities; and

(b) the solvency liabilities, but without the exclusions referred to in the definition of solvency liabilities,

of the pensions, deferred pensions, ancillary benefits or pension benefits for which the successor employer has assumed responsibility;

"transferred members" means those members, former members and persons entitled to a payment from a pension fund whose benefits are subject to a transfer of assets and liabilities in accordance with Part VI(C) of these regulations;

"transfer ratio" means the fraction obtained by dividing the solvency assets of a pension plan by the solvency liabilities of the plan calculated at the latest valuation date;

"valuation date" means the date as of which the assets and liabilities are valued for the purposes of the going concern and solvency valuations in a report;

"wind up value" means the commuted value of a member's entitlement under a defined benefit provision of a pension plan determined as if the plan had been wound up on the date of determination.

(2) Where, in respect of an investment in a pension plan, there is no market value and the investment is issued or guaranteed by a government, then, for the purpose of calculating solvency assets or a transfer ratio, the book value of the investment shall be used.

(3) For the purposes of these Regulations, a going concern unfunded liability, a past service unfunded liability, a solvency deficiency or a transfer ratio, respectively, arises on the date specified in the report as the date on which such going concern, unfunded liability, past service unfunded liability, solvency deficiency or transfer ratio, as the case may be, is determined.

B - Funding

Funding of defined benefit plan

40 (1) The total annual contributions to be made to a defined benefit provision of a pension plan each year by the combination of employer and member contributions shall be equal to the greater of—

(a) the amount required to fund the plan on a going concern basis as specified in paragraph (2); and

(b) the sum of—

(i) the normal cost determined in a going concern valuation; and

(ii) the annual amount of special payments required to amortise any solvency deficiency as at the valuation date over an amortisation period not exceeding five years.

(2) The amount required to fund a defined benefit provision of a pension plan on a going concern basis is equal to the sum of the following elements of the going concern valuation for the year—

(a) the normal cost;

(b) the special payments, if any, required to amortise the past service unfunded liability;

(c) special payments required to amortise the actuarial losses, less any special payments required to amortise the actuarial gains;

(d) the remaining special payments required to amortise the going concern unfunded liability in the immediately preceding reports prepared in accordance with regulation 50(1), 51(1) or 51(4).

(3) The employer's required annual contributions shall be equal to the total annual contribution determined in paragraph (1), less the expected member contributions based on the member contribution rate determined in paragraph (4), but shall not be less than zero.

(4) For the purposes of paragraph (1), members contributions shall be in accordance with the plan provisions and the Act.

(5) The payments referred to in paragraph (1) and paragraph (2) shall be made by the employer or the person who is required to make contributions on behalf of the employer in accordance with paragraphs (6) to (9).

(6) All sums received by the employer from the member, including money withheld by payroll deduction or otherwise from the member, as the member's contribution to the pension plan, shall be paid into the pension fund within thirty days following the month in which the sum was received or deducted.

(7) Employer contributions in respect of the normal cost for each period covered by a report beginning on or after 1 August, 2004, shall be paid into the pension fund, in monthly installments within thirty days after the month for which contributions are payable.

(8) The amount of the installment referred to in paragraph (7) shall be—

(a) a total fixed dollar amount;

(b) a fixed dollar amount in respect of each member of the pension plan; or

(c) a fixed percentage either of the portion of payroll related to members of the pension plan or of the members' contributions.

(9) Employer contributions for special payments with interest at the going concern valuation interest rate, shall be paid into the pension fund in equal monthly installments over a period of fifteen years beginning on the valuation date of the report in which the unfunded liability or actuarial loss was determined.

(10) Employer contributions for amounts required to amortise any solvency deficiency with interest at the rate used to determine the solvency deficiency, shall be paid into the pension fund in equal monthly

installments over a period of five years beginning on the valuation date of the report in which the solvency deficiency was determined.

(11) A surplus established under a going concern valuation may be used to reduce or determine employer contributions to the plan until the earlier of the date at which—

(a) the plan is no longer in surplus on a going concern basis; and

(b) the plan has a solvency deficiency,

as determined in a report.

C - Sales, Transfers and New Plans

Application for approval

41 (1) An application shall identify, by name and registration number, the exporting plan(s) and the importing plan affected by the transfer proposal, and the market value of assets and the value of the liabilities, determined in accordance with Part VI C, to be transferred from or to each applicable exporting or importing plan and must include all the information, statements and reports required by Part VI C.

(2) Where a transfer of assets and liabilities results from a transaction described in section 47(1) of the Act, the application shall include those portions of the purchase and sale agreement and any subsequent revisions to that agreement which relate to the transfer of assets and liabilities.

Notice of Proposed Transfer

42 (1) Where an employer proposes to transfer assets and liabilities from an exporting plan to an importing plan, the employer shall give notice of his intention to do so to the following persons—

(a) each member, former member and any other person entitled to payment from the exporting plan;

(b) each member, former member and any other person entitled to payment from the importing plan;

(c) each trade union that represents members of the exporting plan; and

(d) each trade union that represents members of the importing plan.

(2) The notice required under paragraph (1) shall contain—

(a) the name and registration number of each exporting plan;

(b) the name and registration number of each importing plan;

(c) the proposed effective date of transfer;

(d) in the case of a defined benefit provision of a pension plan an explanation of the proposed transfer of assets and liabilities, including the transfer ratio or the asset transfer ratio, as applicable, of each of the exporting plan and the importing plan;

(e) notice that copies of the report submitted or to be submitted to the Commission in support of the transfer of assets request, excluding information as to the service, salary, pension benefits or other personal information related to any specific person (unless that person's prior consent is obtained), are or will be available for review at the offices of the administrator of the exporting plan and, where different, at the offices of the administrator of the importing plan;

(f) where the plan is in a surplus position, the intended treatment of surplus and the basis for the allocation, if any, of the surplus;

(g) a statement that no assets or liabilities may be transferred until the approval of the Commission is obtained; and

(h) a statement that comments concerning the proposed transfer may be submitted to the Commission within a thirty-day period following receipt of the notice.

(3) The notice required pursuant to paragraph (1) shall be transmitted by personal delivery or by registered mail, however the Commission may, where it considers it appropriate to do so, accept another form of notice or another method of delivery, or both.

(4) The employer shall submit to the Commission a copy of the notice required under paragraph (1) before transmitting it to the persons required under this regulation.

(5) Copies of the notices given pursuant to paragraph (1) shall be submitted to the Commission with the application for the approval of the transfer, together with a certification by the employer in respect of each notice transmitted as to—

(a) the date on which the last notice was transmitted;

(b) the persons or bodies to whom the notice was transmitted; and

(c) the method of delivery of the notice.

Reports and Statements

Defined Contribution Provisions

43 (1) Where an amount is transferred in accordance with Part VI C from—

(a) the defined contribution provision of a pension plan to the defined contribution provision of another pension plan, the amount transferred shall not be less than the value of the account balances of the transferred members;

(b) the defined contribution provision of a pension plan, to the defined benefit provision of another pension plan, the amount transferred shall not be less than the value of the account balances of the transferred members, and the commuted value of the defined benefit which is provided, determined at the date of transfer, shall not be less than the amount transferred;

(c) the defined benefit provision of a pension plan to the defined contribution provision of another pension plan, the amount transferred shall not be less than the wind up value, determined at the date of the transfer, in respect of each transferred member.

(2) The Commission shall not approve a transfer under paragraph (1)(c) where the funded ratio of the exporting defined benefit provision is less than one, until the employer contributes such amount as is required to fully fund the value of the benefits to be transferred.

(3) An explanation of the proposed transfer of assets and liabilities and a statement that such transfer complies with paragraph (1) shall be prepared by an accountant, an actuary or a person who is authorised by a financial institution.

Defined Benefit Provisions - Full Transfers

44 (1) Where all of the assets and liabilities are transferred from a defined benefit provision of a pension plan to another defined benefit provision, reports, prepared at the effective date of transfer and in accordance with this regulation, shall be submitted to the Commission in

support of the application, however the Commission may, where it considers it appropriate so to do, permit a report to be prepared with a date other than the effective date of transfer.

(2) For the purpose of paragraph (1), the actuarial methods and assumptions used in preparing the solvency valuations in the reports for the exporting plan and the importing plan shall be consistent.

(3) In respect of each exporting plan, the report must include—

(a) a going concern valuation and a solvency valuation;

(b) the transfer ratio; and

(c) the amount of any going concern unfunded liability or solvency deficiency, or both, and the amount of any special payments, including the amortisation period required to liquidate the going concern unfunded liability or solvency deficiency, or both, must be identified.

(4) In lieu of preparing a report for each exporting plan, a single consolidated report, which includes information relating to each of the exporting plans, may be prepared.

(5) A report prepared for the importing plan must include a going concern valuation and a solvency valuation and meet the requirements of paragraphs (6) to (9) of this regulation.

(6) Where the report for the importing plan indicates that special payments are required, the scheduled amount of each monthly amortisation payment must be no less than the sum of the corresponding scheduled amounts of the monthly special payments required for the exporting plans immediately prior to any asset transfers.

(7) For the purposes of paragraph (6), the amortisation period should be shortened, if appropriate, and the final amortisation payment adjusted accordingly.

(8) Except as permitted by paragraph (9), payments which are not less than the scheduled amount of the monthly amortisation payments for the importing plan must be continued until the date on which the going concern unfunded liability or solvency deficiency, or both, identified for the importing plan at the effective date of transfer is fully amortised or otherwise liquidated.

(9) Where an actuarial gain or solvency excess emerges after the effective date of any of the reports, the amortisation payment schedule established in the applicable report may be adjusted in accordance with regulation 51(1)(g).

Defined Benefit Provisions - Partial Transfers

45 (1) Where less than all of the assets and liabilities are transferred from a defined benefit provision of a pension plan to another defined benefit provision, reports, prepared at the effective date of transfer and in accordance with this regulation, shall be submitted to the Commission in support of the application, however, the Commission may, where it considers it appropriate so to do, permit a report to be prepared with a date other than the effective date of transfer.

(2) In respect of each exporting plan, the report must include—

(a) a going concern valuation and a solvency valuation;

(b) the asset transfer ratio;

(c) the going concern liabilities, solvency liabilities and asset transfer value of the benefits for which the importing plan has assumed responsibility;

(d) the going concern liabilities, solvency liabilities and residual asset value of the benefits for which the exporting plan has retained responsibility; and

(e) the amount of and the basis for determination of the assets to be transferred to the importing plan.

(3) For the purposes of paragraph (2)(e), assets having a market value as at the effective date of transfer of not less than the lower of the asset transfer value or the solvency liabilities reported under paragraph (2)(c) shall be transferred from the exporting pension plan to the importing pension plan.

(4) The Commission shall refuse to consent to a transfer under this regulation if after such a transfer the market value of the assets remaining in the exporting pension plan as at the effective date of transfer would be less than the lower of the residual asset value or the solvency liabilities reported under paragraph (2)(d).

(5) Notwithstanding paragraphs (3) and (4), the Commission may, under exceptional circumstances, require or permit a transfer of assets determined using some other equitable basis.

(6) A report prepared for the importing plan must include a going concern valuation and a solvency valuation and meet the requirements of paragraph (7).

(7) In the preparation of the report required under paragraph (6), there may be included as past service unfunded liabilities, the net increase in liabilities as a result of—

(a) benefit improvements granted to the transferred members on the date they become members of the importing pension plan; and

(b) the difference in going concern liabilities arising as a result of the differences in actuarial funding method or assumptions between the exporting pension plan and the importing pension plan as reported in the last report submitted under the Act and the regulations.

Plan Amendments

46 (1) Amendments to an exporting plan, which provide for a transfer of assets and liabilities to an importing plan, shall be submitted to the Commission in support of the application.

(2) Amendments to an importing plan which provide for a transfer of assets and liabilities from an exporting plan shall be submitted to the Commission in support of the application.

Administrator to Retain Member Records

47 (1) The administrator of an importing plan shall maintain and retain a record of information about each exporting plan at the effective date of transfer.

(2) The information referred to in paragraph (1) shall be sufficient to identify all the members, former members and any other persons entitled to payment from each exporting plan on the effective date of transfer and their respective benefits as at the effective date of transfer.

(3) The record of information about each exporting plan shall include the names of the members, former members and any other persons, their respective benefits (including accrued pension benefits and ancillary benefits), their last known address at the effective date of transfer, and the market value of the assets, the going concern liabilities and the solvency liabilities of the plan.

(4) Paragraphs (1), (2) and (3) also apply to the administrator of the importing plan with respect to the members, former members and any other persons entitled to a payment from the importing plan prior to any transfer of assets to such plan.

Effective Date

48 Part VI C of the regulations shall be effective with respect to transfers which have an effective date on or after 1 August, 2004.

D - Calculation of Assets and Liabilities and Reports

Method of calculating assets and liabilities

49 (1) The assets and liabilities in a defined benefit provision of a pension plan shall—

(a) be determined in a manner that complies with the Standards of Practice of the Canadian Institute of Actuaries or a corresponding British or American equivalent that may be approved for this purpose by the Commission; and

(b) be determined as at the effective date of the valuation of the pension plan.

(2) The assets and liabilities in a defined contribution provision of a pension plan shall be determined using the market value of the accumulated contributions, with investment income, made to the pension fund by or in respect of the members or former members, less any applicable fees.

Initial valuation report

50 (1) The initial valuation report required to be submitted with an application for registration of a pension plan shall following the coming into operation of these regulations, set out, on the basis of an ongoing concern valuation—

(a) the normal cost in the year of registration of the plan ("the initial year") and the formula for computing normal cost in subsequent years up to the date of the next report ("subsequent years");

(b) an estimate of the normal cost in each of the subsequent years up to the date of the next report;

(c) a calculation of the employer's required contributions in each of the initial year and the subsequent years in accordance with the First Schedule to the Act and regulation 40(3);

(d) estimated total employee contributions, if any, during each of the initial year and subsequent years up to the date of the next report;

(e) the past service unfunded liability or surplus, if any, as at the initial valuation date;

(f) where there is a past service unfunded liability, the special payments required to amortise it over a term not exceeding fifteen years;

(g) information respecting escalated adjustments, if any; and

(h) such other information that may be required by the Commission.

(2) If the actuary is of the opinion that there is a solvency deficiency, the report shall also set out, on the basis of a solvency valuation—

(a) the amount of the solvency deficiency and the special payments needed to amortise it over a term not exceeding five years; and

(b) whether the transfer ratio is less than 1.00 and if it is, the transfer ratio.

Triennial report and solvency concerns

51. (1) The report referred to in section 7(3)(c)(i) of the Act (in these regulations referred to as "the triennial report") shall contain the following information-—

(a) the normal cost in the year following the valuation date of the report ("the first year") and the formula for computing normal cost in subsequent years up to the date the next report ("the following years") is due to be submitted to the Commission;

(b) an estimate of the normal cost in each of the following years up to the date of the next report;

(c) a calculation of the employer's required contributions in each of the first year and the following years in accordance with the First Schedule to the Act and regulation 40(3);

(d) estimated total employee contributions, if any, during each of the first year and the following years up to the date of the next report;

(e) the special payments to be made in accordance with regulation 40(2);

(f) the present value of future special payments remaining to be paid after the valuation date;

(g) information respecting escalated adjustments, if any;

(h) the actuarial gain or actuarial loss in the pension plan and —

(i) where there is an actuarial gain, the special payments that will amortise any decrease in a going concern unfunded liability resulting from the gain over a term not to exceed fifteen years; or

(ii) where there is an actuarial loss, the special payments that will amortise any increase in a going concern unfunded liability resulting from the loss over a term not to exceed fifteen years;

(i) the going concern liabilities as at the valuation date;

(j) the book and market values of the pension plan assets as at the valuation date; and

(k) such other information that may be required by the Commission.

(2) The reports referred to in regulations 50(1) and 51(1) shall be prepared in a manner that complies with the Standards of Practice of the Canadian Institute of Actuaries, or a corresponding British or American equivalent approved for this purpose by the Commission.

(3) If the actuary is of the opinion that there is a solvency deficiency, the triennial report shall also set out, on the basis of a solvency valuation—

(a) the amount of the solvency deficiency and the special payments required to amortise it over a term not to exceed five years;

(b) any liabilities excluded from the report including escalated adjustments and prospective benefits increases;

(c) an estimate of the wind up expenses; and

(d) whether the transfer ratio is less than 1.00, and if it is, the transfer ratio.

(4) Where a report indicates a solvency concern, a subsequent report shall be prepared within one year from the valuation date of the report which identified the solvency concern, or by such earlier date as the Commission may specify.

(5) For the purposes of this regulation a solvency concern exists when—

(a) the ratio of the solvency assets to the solvency liabilities is less than 0.8; or

(b) the solvency liabilities exceed the solvency assets by more than $500,000.00 and the ratio of the solvency assets to the solvency liabilities is less than 0.9.

Report on amendment of defined benefit plan

52. (1) An administrator of a defined benefit pension plan shall submit a report of an actuary to the Commission if an amendment to the plan reduces or increases contributions or creates or changes a going concern unfunded liability or solvency deficiency.

(2) A report referred to in paragraph (1) shall—

(a) contain the information required to be included in a triennial report, under regulation 51, that may be affected by the amendment; and

(b) be submitted to the Commission within six months from the date that the amendment is required to be submitted to the Commission for registration.

Actuarial Reports

53. An actuary who prepares a report under these regulations shall—

(a) use assumptions which are appropriate for the pension plan and methods consistent with-

(i) sound principles established by precedent or by common usage within the actuarial profession;

(ii) the requirements of the Act and the regulations; and

(b) certify that the report meets the requirements of the Act and the regulations.

E - Supplementary Provisions

Protection of life annuity contracts

54. (1) An annuity contract purchased under a pension plan registered under the Act shall be administered in accordance with the terms of the plan, as a pension or benefit under the Act and the regulations, and shall contain a provision which states that, except as permitted under the Act, no money transferred, including interest, for the purchase of such annuity, shall be assigned, charged, anticipated or given as security.

(2) Any purported assignment, charge, anticipation or giving as security, as the case may be, of an annuity contract shall be void.

(3) Subject to paragraph (4), prior to the expiry of a guaranteed period of an annuity, the annuitant may only commute the remaining value of the annuity for the purpose of transferring it to a prescribed retirement product.

(4) Notwithstanding paragraph (3), where an annuitant's surviving beneficiary inherits an annuity with an unexpired guaranteed period, the surviving beneficiary may commute the annuity in favour of a lump sum payment.

(5) A purported commutation otherwise than in accordance with paragraph (3) or (4) is void.

(6) In calculating the amount of the annuity purchased under a defined contribution pension plan, the sex of the annuitant may be taken into account.

(7) If the pension plan from which money was originally transferred to an annuity contract provided for variation in the terms of payment or other benefit in accordance with section 34 of the Act then the annuity contract shall have a similar provision.

Calculation of commuted value

55. (1) The commuted value of a pension or benefit determined under a defined benefit provision of a pension plan shall—

(a) be determined in a manner that complies with the Canadian Institute of Actuaries Recommendations for the Computation of Transfer Values from Registered Pension Plans, or a corresponding British or American equivalent that may be approved for this purpose by the Commission; and

(b) be determined as at the date of termination of membership, death, retirement, or termination of a pension plan.

(2) The commuted value of a pension or benefit determined under a defined contribution provision of a pension plan shall be the value of the accumulated contributions, with investment earnings, made to the pension fund by or in respect of the member or former member.

(3) If, at the date of determination of the commuted value of the pension or benefit, the former member has an unconditional entitlement to optional forms of a pension or benefit or to optional commencement

dates, the option that has the greatest value shall be used to determine the commuted value.

Employer holds money in trust for member

56. (1) Where an employer receives money from a member under an arrangement that the employer will pay the money into a pension fund as the member's contribution under the pension plan, the employer shall be deemed to hold the money in trust for the member until the employer pays the money into the pension fund.

(2) For the purposes of paragraph (1), money withheld by an employer, whether by payroll deduction or otherwise, from money payable to a member shall be deemed to be money received by the employer from the member.

(3) An employer who is required to pay contributions to a pension fund shall be deemed to hold in trust for the beneficiaries of the pension plan an amount of money equal to the employer contributions due and not paid into the pension fund.

(4) Where a pension plan is wound up in whole or in part, an employer who is required to pay contributions to the pension fund shall be deemed to hold in trust for the beneficiaries of the pension plan an amount of money equal to employer contributions accrued to the date of the wind up but not yet due under the plan or regulations.

(5) The administrator of a pension plan has a lien and charge on the assets of the employer in an amount equal to the amounts deemed to be held in trust under paragraphs (1), (3) and (4).

(6) The assets or property of an employer or the proceeds of sale of the assets or property shall not be distributed to any person entitled thereto until provision has been made for the payment into a pension fund of any amount payable by the employer.

(7) Paragraphs (1), (3) and (4) apply whether or not the money has been kept separate and apart from other money or property of the employer.

(8) Paragraphs (1) to (7) apply with necessary modifications in respect of money to be paid to an insurance company that guarantees pension benefits under a pension plan.".

Made this 13th day of August, 2004

Minister of Finance