



Consultation Paper:

**Harmonization and Streamlining of
Pension Administration and Regulation**

**Ministry of Finance
February 1999**

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I. EXECUTIVE SUMMARY

In the 1998 Ontario Budget, Finance Minister Ernie Eves said the Government was planning action on some of the suggestions made in earlier consultations, but would first consult on specific proposals.

During the ‘red tape’ review and the 1997 general consultation on pension issues, groups and individuals interested in pension legislation made submissions to the Government. Many of the submissions supported streamlining the *Pension Benefits Act* and regulations.

This consultation paper describes a number of proposed minor and technical amendments of the Act and regulations. They were developed by Ministry staff with the support of the Financial Services Commission of Ontario (FSCO). The proposals draw on suggestions received in the previous consultations and FSCO’s experiences as the Province’s pension supervisor.

The proposed minor and technical amendments are expected to:

- increase the degree of harmonization with the pension standards legislation and regulations of other jurisdictions in Canada
- streamline pension plan administration, and
- support supervisory and regulatory operations of FSCO.

This consultation paper also invites comments about possible reform of the rules governing life income funds (LIFs). A number of groups and individuals have suggested that these rules should be changed to address concerns about access but do not want to add to the administrative burden. Several other jurisdictions in Canada have already taken some steps to reform their LIF rules or prescribed arrangements for retirement savings.

A LIF is a type of account, designated by the *Pension Benefits Act*, which is used to hold, invest and pay out assets that originated in a pension plan. It is a locked-in type of RRIF (registered retirement income fund) under the *Income Tax Act* (Canada).

A person is not permitted to establish a LIF until just before he or she is eligible to begin receiving a pension (for most plan members, age 55). The Act requires a LIF holder to withdraw some money each year, but sets the minimum and maximum annual payout. Under existing rules the LIF assets must be used to purchase a life annuity by age 80.

A number of previous submissions proposed ending the requirement to purchase an annuity. In addition, there are a number of different options for changing the maximum annual withdrawal from a LIF. Some are currently in use in other jurisdictions. The Government is soliciting the widest possible range of views on alternative models and on the pension policy principles underlying these models.

II. MINOR AND TECHNICAL AMENDMENTS

Budget commitment

In the May 1998 Budget, the Government stated:

In last year's Budget, the Government noted that the Province's pension legislation is complex, inefficient and costly. Through consultations, over 50 suggestions were made for amendments to the *Pension Benefits Act* and Regulations that could reduce red tape and increase harmonization of Ontario's pension rules with other Canadian jurisdictions. The Government will consult on these proposals and bring forward for the consideration of the Legislature the necessary changes to ensure that they will meet the needs of both employers and employees.

Background

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In the summer of 1997, the Government conducted a broad, open-ended consultation on pension reform. Many of the submissions received supported a streamlining of the PBA and regulations.

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The proposals were developed by Ministry staff, with the support of FSCO, and draw on submissions received in the 1997 consultation and FSCO's experiences as the Province's pension regulator. Also, some proposals reflect FSCO's current or desired supervisory and regulatory practice and a willingness to accept first-level certification of compliance from the professional advisors most familiar with the operations of a pension plan or fund. The PBA gives the Superintendent the authority to request information for the purposes of determining compliance.

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These “minor and technical” amendments are expected:

- (i) to increase the degree of harmonization with the pension standards legislation and regulations of other jurisdictions in Canada,
- (ii) to streamline pension plan administration, and
- (iii) to support supervisory and regulatory operations of the Financial Services Commission of Ontario (FSCO).

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The proposed amendments of the Act and the Regulation are generally set out in the order of the existing provisions and the headings are those used in the Act and the Regulation. To assist the consultation process and help illustrate the proposals, samples of possible drafting are attached in the Appendix.

A. Proposed amendments of the Act

Registration and administration

1. *Clarify that where there is more than one employer under a pension plan, the administrator of the pension plan may be one or more of the employers. [PBA s. 8(1)(a)]*

Discussion:

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This is a technical correction. It responds to the view expressed by some lawyers that the provisions of the Act setting out who can administer a pension plan do not permit a single employer to be designated as sole administrator when a pension plan covers employees of a number of related employers.

2. *Remove the statutory requirement to apply for registration of a new pension plan within 60 days and provide for the filing period to be fixed by regulation. A*

corresponding consequential amendment of the Regulation is proposed to require the application to be filed within 90 days. [PBA s. 9(1), 115(1)]

Discussion:

- The Act requires a plan administrator file a new plan for registration within 60 days of the establishment of the plan. Some sponsors have indicated that this time limit does not allow sufficient time for the administrator to liaise with consultants, actuaries and lawyers and to file the application form, necessary plan documents and the registration fee.

3. *Create a new definition of “pension fund holder” to refer to a prescribed person who has custody of a pension fund or who is an insurance company, and use the term instead of the term “trustee of a pension fund”. Provide that the pension plan administrator will be responsible for the selection and supervision of the pension fund holder. Provide for the authority to prescribe who may be a pension fund holder. Allow for pension fund societies established under the laws of Canada to act as pension fund holders. [PBA s. 1, 22(6), 22(6.1), 115(1); consequential regulation]*

Discussion:

- This amendment will clarify requirements and facilitate compliance.

- In addition, fund custodians sometimes assert that they are not agents and, therefore, not subject to the existing requirement (in section 56 (1) of the PBA) for an administrator, or the administrator’s agent responsible for receiving contributions, to notify the Superintendent of non-remittance. Changing the terminology will address the concern of fund custodians that they are not “agents”. The notification requirement is proposed to be clarified by item 8, below.

Disclosure of information

4. *Allow inspection of plan documents by administrators, employers, persons required to make contributions on behalf of employers and other persons prescribed by regulation. Confer authority to prescribe who may inspect pension plan and pension fund documents. [PBA s. 29(1), 30, 115(1)]*

Discussion:

- Under the PBA, members and former members of a pension plan (and spouses) and any other person entitled to pension benefits under the plan, their agent and representatives of a union that represents members of the plan are entitled to inspect certain prescribed plan documents maintained by the plan administrator and filed with FSCO. Employers and (in respect of documents filed with FSCO) plan administrators are not included in the group of persons entitled to inspect documents.

- The proposal would permit administrators to inspect copies of documents filed with FSCO if they have misplaced plan records or failed to retain a copy of a document. Employers who are responsible for contributing to a plan sponsored by another employer or a union, or employers who sponsor or co-sponsor plans administered by someone other than the employer, would be permitted access to plan documents without having to make a request under the Freedom of Information Act (Ontario).

Benefits

5. *Clarify that past service buy-backs are exempt from the rule that employers must pay half the cost of all contributory defined benefits. [PBA s. 1, 39(5)]*

Discussion:

- Some plans allow members to buy additional past service credits on an actuarial cost basis. A member makes the election knowing the cost of the additional credit. However, since the PBA requires employers to pay for at least 50% of the cost of a contributory benefit,

employers are sometimes reluctant to provide this option because of uncertainty about the application of the current provision.

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The proposed amendment is consistent with the approach of some jurisdictions (Quebec, Newfoundland, Saskatchewan).

6. *Allow payment in cash of that portion of commuted value which exceeds the maximum transfer amount permitted under the ITA. The authority to prescribe retirement savings arrangements for these purposes will be confirmed. Consequential amendment of the regulation would be required. [PBA s. 42, 115(1); Regulation s. 21, 21.1]*

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The Income Tax Act limits the amount that may be transferred on a tax sheltered basis to a locked in retirement savings arrangement (LIRA or LIF) when a former pension plan member commutes the deferred pension benefit into a lump sum. Existing Ontario rules require the excess to be transferred into an unlocked RRSP or RRIF, before the funds may be withdrawn, even though some plan members may not have sufficient unused RRSP room and Revenue Canada may impose a penalty if the excess is not withdrawn immediately. This extra step is unnecessary.

7. *Permit spouses of former members to waive their entitlement to pre-retirement death benefits in favour of designated beneficiaries. [PBA s. 48(14)]*

Discussion:

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Corrects a drafting omission.

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Spouses of members and former members are entitled to pre-retirement death benefits. The Act permits members and their spouses to waive this entitlement in favour of designated beneficiaries. Even though former members who leave their money with the former employer are entitled to pre-retirement death benefits, they do not have the same option to waive this entitlement, due to a drafting error in section 48 (14) of the PBA.

Contributions

8. *Clarify the pension plan administrator's responsibility to undertake action to recover unremitted contributions and then, only after all reasonable actions have been taken, report any unrecovered contributions to the Superintendent. Clarify the responsibility of a pension fund holder to report the non-remittance of contributions to the Superintendent based on a projected summary of required contributions provided by the plan administrator. Provide for the authority to prescribe the time limits referred to in these provisions. A consequential regulation would prescribe the time period for an administrator to deliver the summary of required contributions, and the time period for notice to Superintendent of non-delivery of the contributions summary and failure to pay contributions when due. [PBA s. 56; consequential regulation]*

Discussion:

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This amendment clarifies responsibilities.

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The proposed amendment will clarify that administrators are required to take action to recover unpaid contributions. This situation is relevant in the case of a multi-employer pension plan (MEPP) or other instance in which the administrator of the plan is not the employer. The administrator is required to administer the pension plan and fund in accordance with the Act and regulations. Also, an administrator must administer the pension fund with the care, skill and diligence that a prudent person would exercise in dealing with another person's property. The Act expressly permits the administrator to take legal proceedings to collect unpaid contributions. The existing notification requirement does not relieve the administrator of its responsibility to pursue unpaid contributions.

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The administrator of the MEPP is in a better position to monitor the situation and take action. In a MEPP there may be many employers who are delinquent for very nominal contributions. This may result in long lists being sent to the Superintendent, who does not

maintain a current list of employers participating in the MEPP and is not in the best position to take enforcement action.

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Under the Act, the plan administrator may employ agents (essentially service providers) to carry out duties of the administrator related to plan administration. The Act requires the administrator and its agent, if any, who receives contributions for the pension fund to advise the Superintendent within stated time periods if a contribution is not paid when due.

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The proposed amendment will restate the notification requirement using the new term “pension fund holder” (see item 3, above) and will require the administrator to provide the fund holder with a payment schedule. Time periods to frame the notification obligation will be prescribed. The existing notification requirement often does not achieve its purpose because the fund custodian does not have sufficient information to know when a required contribution is not paid.

Winding up

9. *Clarify that the Superintendent may rescind the appointment of a Superintendent-appointed administrator in an insolvency, and make a new appointment.* [PBA s. 8(1.1), 69, 71]

Discussion:

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In the event of the insolvency of a pension plan sponsor or employer, employees are generally terminated and contributions to the pension plan generally cease. In such circumstances the plan would be wound up. Typically, there is no administrator and the Superintendent may act or appoint an administrator. Costs are paid out of the pension fund.

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The Act does not address the authority of the Superintendent to rescind the appointment,

such as when the Superintendent considers the costs or actions of the appointed administrator to be inappropriate.

10. *Permit the Superintendent to consent to the payment of surplus on plan wind-up where the Superintendent is satisfied that reasonable efforts have been made to locate unfound persons who are entitled to a distribution of surplus and that adequate provision has been made for payment of surplus to the unlocated persons. [PBA s. 79]*

Discussion:

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The Act requires that provision be made for the payment of all liabilities of a pension plan before regulatory consent is given for wind up. The Act does not provide a mechanism for settling any surplus that is payable to unlocated beneficiaries. As a result, the surplus must be retained in the pension fund and cannot be paid out. This prevents the wind-up from being completed, and the administrator from being discharged.

Financial Services Commission of Ontario

11. *This amendment will give the Minister the authority, with Cabinet approval, to enter into agreements about the application of the pension legislation of Ontario and the other jurisdictions in Canada, and to enter into other arrangements for pension administration; and will authorize the Minister to delegate his authority to the Superintendent of Financial Services. [PBA s. 95]*

Discussion:

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This is an enabling provision.

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Jurisdictional differences and the potential impact on present and future pension benefits of Ontario employees would be important considerations before Ontario enters a multi

jurisdictional agreement. An enabling provision would not preclude public discussion of the merits of such an agreement.

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The Act currently provides that, with cabinet approval, FSCO may enter agreements for the reciprocal application and enforcement of pension benefits legislation, reciprocal registration, audit and inspection. The current reciprocal agreement has existed for some time and practical considerations have led to efforts seeking a new agreement.

General

12. *Clarifies that the Superintendent's authority to cause an examination or investigation with the benefit of access to plan documents includes the authority to require a professional opinion or report prepared by a designated person. Gives the Superintendent authority to require the employer or administrator to pay for the cost of the examination, investigation or report. [PBA s. 106(1) and (2), 106(5.1), 106(12), 106.1]*

Discussion:

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Existing rules permit the Superintendent to require any person to provide such information that the Superintendent needs to ascertain compliance with the Act and regulations. However, when the administrator or employer does not provide sufficient information and there is a strong suspicion of non-compliance, the Superintendent must rely on the statutory right of access to inspect or gather information.

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This amendment will provide authority for the Superintendent to require that an external investigation report or special purpose audit report be prepared with assured access and to require that the cost be borne by the pension fund.

B. Proposed amendments of the Regulation

Definitions

13. *Adopt the actuarial profession's current term 'accepted actuarial practice', in place of 'generally accepted actuarial principles and practice' [Act s. 88(2)(b), Regulation s. 1(2), 16(1), 19(1.2)]*

Discussion:

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The Canadian Institute of Actuaries (CIA) has replaced the term “generally accepted actuarial principles and practice” with the term “accepted actuarial practice”.

14. *Correct the typographical error in the definition of “Ontario assets”. The reference to clause 30(2)(c) should refer to clause 30(2)(e). [Regulation s. 1(2)]*

Payments -- general

15. *Allow the Superintendent the flexibility not to appoint an actuary to prepare a funding report when a valuation report is not filed within one year of its due date. [Regulation s. 4(6) and (7)]*

Discussion:

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The regulations require that an actuarial report be filed when a plan is first established, at least triennially thereafter, and when a plan is amended. If the report is not filed within one year of its due date, the regulation requires the Superintendent to have a new funding report prepared by an actuary designated by the Superintendent.

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It has been suggested that the one year deadline is not always appropriate and that the Superintendent should have some discretion to delay the appointment of an actuary to prepare the report in circumstances where a longer filing period is justified.

Special payments -- general

16. *Allow employers flexibility to apply any prior year credit balance to reduce or eliminate any unfunded liability or solvency deficiency, or to take a contribution holiday.* [Regulation s. 5(16)]

Discussion:

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This is a clarification.

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The prior year credit balance (PYCB) is a concept introduced in November 1992 that is intended to deal with certain overpayments resulting from recalculations under solvency regulations which extended the number of years over which a funding shortfall could be repaid. There is some uncertainty as to whether these overpayments can only be used for contribution holidays, since the fund must account for them as prepaid contributions, thereby adding to liabilities.

Contribution requirements in year of report

17. *Clarify that the amount of under-contributions calculated from the effective date of a pension plan valuation must be paid within 60 days following the filing of the valuation report, with interest.* [Regulation s. 12]

Discussion:

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Between the date as of which an actuarial valuation report is prepared (the effective date) and the date the report is actually filed (the filing date), the sponsor is permitted to make contributions based on the previously-filed report, which sometimes results in under-contributions to the fund. When under-contributions occur, it is not clear under the existing provision that the amount of the under-contribution, and accrued interest, must be paid upon the filing of the new report.

Reports

18. *Eliminate the requirement for a cost certificate, in the case of 'defined contribution' plans.* [Regulation s. 3, 13, 14, 15]

Discussion:

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The 'cost certificate' is the report which estimates the required level of contributions by the plan sponsor and/or plan administrator. The cost certificate does not provide very meaningful or reliable information for determining required contributions in a defined contribution plan.

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There are alternative sources of information available (in other required filings) for determining funding compliance. The most reliable source of funding information is the plan text and the payroll information of the plan sponsor and administrator. This information is reported in the Annual Information Return. The costs and administrative burden to plan administrators with regard to this report would be reduced by eliminating this filing requirement.

19. *Permit the Superintendent (in his or her discretion) to extend the effective date of an actuarial report, so that the effective date of the next report may coincide with a particular date or event.* [Regulation s. 14]

Discussion:

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The regulation requires that actuarial reports be prepared within definite deadlines. In some situations, the deadline falls near an upcoming event which will trigger a requirement for an actuarial report. In such cases, having to prepare two reports is not necessary, and imposes additional costs for the sponsor. However, the Superintendent does not have the authority to extend the effective date of the report.

20. *Prescribe circumstances in which an actuarial calculation would not be required for completion of the Pension Benefits Guarantee Fund (PBGF) Assessment Certificate, and replace the prescribed form of certificate with a new form approved by the Superintendent.* [Regulation s. 14(8)(d) and (e)]

Discussion:

- All defined benefit plans must pay a PBGF assessment. Where the plan has no solvency deficiency, the assessment is based on one dollar per person for every Ontario plan member. Where a plan has a solvency deficiency, the assessment includes an amount based on the PBGF's liabilities and an actuarial calculation prescribed in the regulations. This actuarial calculation is required to be made even if there is no solvency deficiency in the plan. This is an unnecessary and costly exercise.

Valuation

21. *Require filing of a standardized form of valuation summary as an additional filing.* [Regulation s. 16.1]

Discussion:

- Valuation reports are presently filed in free form, and their review is time consuming and costly. To enable staff and information systems to assess valuation reports more effectively and to identify possible compliance issues, a standardized form for use by the industry has been developed jointly by Revenue Canada and FSCO staff, with input from the Canadian Institute of Actuaries (CIA) and the actuarial community. This form would be required in addition to the valuation reports.

22. *Provide that a solvency valuation is not required if the actuary is of the opinion that there is no solvency deficiency.* [Regulation s. 17(1.1)]

Discussion:

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The regulation appears to require a solvency valuation to be performed for every defined benefit plan, even where it is clear that solvency liabilities are less than solvency assets. This is an unnecessary and costly exercise.

Interest

23. *Clarify that interest accrues and is payable on late employer and on employee contributions which have been deducted but which remain outstanding (not paid into the pension fund).* [Regulation s. 24(7)]

Discussion:

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The regulation does not provide clear authority to require that interest be paid on an employers' unremitted or late contributions. This interferes with efforts to achieve compliance.

24. *Correct the typographical error in Reg. s. 24(2). Replace the word "that" with the word "than".* [Regulation s. 24(2)]

Commutated value and portability

25. *Delete reference to "prior to maturity" from provision governing transfers from a LIRA* [Regulation s. 21]

Discussion:

- The regulation contains references to transfers from locked-in retirement accounts “prior to maturity”. This phrase was intended to refer to the date the LIRA must be collapsed under the Income Tax Act (Canada) (at age 69), but some have interpreted it to refer to the maturity date of an investment in which the assets of the account may be invested.

Wind up notices

26. *Change the deadlines for settlement of benefits on wind-up to require the administrator to send the statement of benefits within 60 days of receipt of the Superintendent’s notice of approval and to comply with the election made by a person by the later of 60 days after receipt of the election or the Superintendent’s notice of approval.* [Regulation s. 28]

Discussion:

- When a pension plan winds up, the administrator must send each member a statement of benefits, but there is no prescribed time frame for issuing the statement. On receipt of the statement the member who is entitled to elect an option has 90 days to decide and direct the administrator how to deal with these benefits and the administrator must comply with the member’s election within 30 days of receipt of instructions or approval of the wind up. Some sponsors have indicated that a 30-day period is not sufficient to comply with the member’s election, especially where surplus is being distributed.

27. *Require use of the Canadian Institute of Actuaries (CIA) transfer value basis as at the effective date of the wind-up, when calculating the minimum commuted value of benefits on wind-up.* [Regulation s. 29(2)]

Discussion:

- When a pension plan winds up, the value of each member's benefit is required to be based on the cost of purchasing a life annuity from an insurance company equal to the member's pension benefit as at the effective date of the wind-up. However, it is difficult or impossible to obtain quotations for certain types of annuities. The proposed amendment recognizes the practice sanctioned by many pension plan administrators.

28. *Revise the calculation of Ontario wind-up liability.* [Regulation s. 29(10)]

Discussion:

- Corrects inherent double counting in the calculation of Ontario wind-up liability of a plan (involving the 50% and 100% rules used in the formula).

Miscellaneous

29. *Clarify that the formula whereby pension benefits are offset by Canada Pension Plan benefits is to be calculated at termination as if the person had reached age 65.*
[Regulation s. 50(a)]

Discussion:

- The PBA allows pension benefits to be integrated with benefits under the Canada Pension Plan, and the regulation places a maximum limit on how much can be offset. As a result of changes to the CPP which allow an individual to begin to receive reduced CPP payments as early as age 60, the age at which the offset should be applied and the manner of its application are unclear. This proposed amendment clarifies the issue.

Pension fund requirements

30. *Adopt the investment rules prescribed under the Pension Benefits Standards Act, 1985 (Canada) to replace the existing investment rules found in Ontario's regulation. [Regulation s. 1(1), 29.1(2) and (3), 45, 66-75, 77-82]*

Discussion:

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This is a significant harmonization amendment.

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The federal and Ontario's rules are similar in many respects, although because of more recent revision the federal rules expressly address some investment issues not specified in Ontario's rules.

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The new rules introduce some useful additions to the required statement of investment policy, provide additional investment flexibility and provide some further clarification of definitions. These are positive changes as they strengthen the statement of investment policy, bring the regulation more in line with current investment practice and aid the regulatory environment without creating a new reporting level. Significant provisions are:

- ▶ The federal rules provide for new investment categories (derivatives, options, futures) to be addressed in the statement of investment policies and procedures ("SIPP"). It defines permitted related party transactions (in contrast to the inclusion of a "conflict of interest" provision in Ontario's rules).
- ▶ The superintendent is empowered to request additional financial information regarding investments in real-estate, resource properties and investment corporations. The SIPP must be also sent to the actuary and any pension committee. These are additional regulatory requirements.

- ▶ The remaining new rules provide for additional exemptions from quantitative limits (mortgage backed securities, index funds, investment corporations) and allow the registration and custody of securities with a securities depository.

- Existing Ontario rules which would disappear include stipulations for securities lending and the prohibition against pledging assets.

31. *Eliminate the regulatory requirement to file financial statements. Instead, require the auditor, or possibly the plan custodian (pension fund holder), to certify compliance.* [Regulation s. 5.1, 29.1(1)2, 45(1), 76]

Discussion:

- Financial statements do not provide the Superintendent with very meaningful information for determining compliance with asset management requirements.

- A more efficient approach is to require the auditor or custodian (if permitted following application of certain measures addressing the relative risk of the plan) to certify compliance. The certificate would provide an independent professional or custodial attestation of compliance. The proposal would require financial statements for the most recent five years to be retained and available for inspection with the administrator.

- Even if financial statements are not filed and available for inspection at FSCO, they should be prescribed as documents which must be available for inspection at the administrator's premises. Also, the Superintendent has discretion to require such information to be provided to the Superintendent. The information may be sought to back up the certification if the Superintendent deems it necessary.

III. REFORM OF LIFE INCOME FUND REQUIREMENTS

In the Government's recent consultation on possible access to locked-in retirement savings in situations of hardship and shortened life expectancy, some organizations and individuals made submissions which touched on broader questions of access to these locked-in funds.

Some groups identified LIF reform, and the elimination of the annuity purchase requirement, as important issues. The issue of LIF reform is frequently raised in letters to the Minister. The possible amendment of the LIF rules was also suggested by a number of groups and individuals who made submissions to the 1997 pension consultation.

There are a number of different options for changing the maximum annual withdrawal from a LIF. Some are currently in use in other jurisdictions. The Government is soliciting the widest possible range of views on alternative models and on the pension policy principles underlying these models.

Background

- When a member of a pension plan terminates employment, he or she may request the lump sum payment of the accrued, earned pension benefit (the commuted value). This amount is "locked-in" and must be paid into a retirement savings arrangement permitted under the Regulations or used to purchase a life annuity. The Regulation allows payment of the commuted pension benefit (lump sum) into a locked-in retirement account (LIRA) or, within two years before eligibility to receive a pension, into a life income fund (LIF). A LIF may give the holder power to direct the investment of the fund.

- The existing rules require annual payments from the LIF. The annual withdrawals must not be less than the minimum required withdrawal from a registered retirement income fund (RRIF) under the Income Tax Act and may not exceed the maximum calculated

under Ontario's regulation. The amount in the LIF must be used to purchase a life annuity by the end of the year in which the person reaches age 80.

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The maximum withdrawal is the balance in the fund at the beginning of the year divided by the present value of a pension paying \$1 each year to age 90. The key variable is the interest rate used to calculate the present value. The rate used may not exceed 6%, except in the first 15 years when it may be more than 6% but not more than the previous month's rate for long term Canada bonds (as published in the Bank of Canada Review under identification number B-14013 in the CANSIM system).

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The LIF rules provide for payment of the fund balance to beneficiaries or the estate if the holder dies before purchasing an annuity and there is no spouse.

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The policy intent of the existing rules is to give the holder flexibility to determine the amount withdrawn, while placing a cap on withdrawals to ensure that an adequate amount remains in the LIF until age 80 to fund the annuity purchase. Without the mandatory annuity purchase, continued withdrawals of the maximum amount determined under the existing formula would deplete the fund by age 90.

IV. SUBMISSIONS

The Ministry of Finance invites comments on the proposals outlined in this paper. Interested parties are asked to provide their submissions to the Ministry of Finance by **March 18, 1999**.

Submissions should be forwarded to:

**Mr. Terence Young, MPP
Parliamentary Assistant
to the Minister of Finance
7th Fl. Frost Building South
7 Queen's Park Crescent
Toronto ON M7A 1Y7**

**Telephone: (416) 325-2274
Fax: (416) 325-2337
E-mail: terence_young@ontla.ola.org**

Cette publication est également disponible en français sous le titre "Document d'étude: l'harmonisation et la simplification de la réglementation et de l'administration des pensions". Vous pouvez en obtenir un exemplaire en appelant le ministère des Finances au (416) 326-9264. Des exemplaires de cette publication sont aussi disponibles sur le site web du ministère, à l'adresse www.gov.on.ca/fin

APPENDIX

Drafting Examples for Discussion

I. PROPOSED AMENDMENTS OF THE ACT

Registration and administration

1 Employers as administrators

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Clause 8 (1) (a) of the Act is repealed and the following substituted:

- (a) the employer, or one or more of the employers;

2 Time limit for registration of new plans

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Subsection 9 (1) of the Act is repealed and the following substituted:

Application for registration

- (1) The administrator of a pension plan shall apply to the Superintendent for registration of the pension plan within the prescribed period of time.

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Subsection 115 (1) of the Act is amended by adding the following clause:

- (y) prescribing the time within which an application for registration of a pension plan shall be made under subsection 9 (1).

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The Regulation is amended by adding the following section:

- 2.1. For the purposes of subsection 9 (1) of the Act, the administrator of a pension plan shall apply to the Superintendent for registration of the pension plan within 90 days of the date of the establishment of the plan.

3 Pension fund holder

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Section 1 of the *Pension Benefits Act* is amended by adding the following definition:

"pension fund holder" means a person prescribed under subsection 22 (6) who holds all or part of the pension fund referred to in clause 55 (2) (a) or is an insurance company referred to in clause 55 (2) (b);

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Subsection 22 (6) of the Act is repealed and the following substituted:

Pension fund holder

- (6) No person other than a prescribed person shall be a pension fund holder.

- Section 22 of the Act is amended by adding the following subsection:

Responsibility for pension fund holder

(6.1) An administrator of a pension plan who engages a pension fund holder shall personally select the pension fund holder and be satisfied of the pension fund holder's suitability to perform the act for which the pension fund holder is engaged, and the administrator shall carry out such supervision of the pension fund holder as is prudent and reasonable.

- Subsection 115 (1) of the Act is amended by adding the following clause:

(z) prescribing who may be a pension fund holder for the purposes of subsection 22 (6).

- Section 54 of the Regulation is revoked and the following substituted:

PENSION FUND HOLDER

54. For the purposes of subsection 22 (6) of the Act, the persons who may be pension fund holders are,

- (a) a government;
- (b) an insurance company;
- (c) a trust in Canada governed by a written trust agreement under which the trustee is or the trustees are,
 - (i) a trust corporation registered under the *Loan and Trust Corporations Act*,
 - (ii) three or more individuals, at least three of whom reside in Canada and at least one of whom is independent of any employer contributing to the pension fund, to the extent the individual is neither a significant shareholder, partner,

proprietor, director, officer, nor an employee of an employer contributing to the fund or an affiliate of the employer, or

- (iii) a pension fund society established under the *Pension Fund Societies Act (Canada)*;
- (d) a person under the *Government Annuities Act (Canada)*;
- (e) a board, agency, commission or corporation made responsible by an Act of the Legislature for the administration of the pension fund; or
- (f) any combination of the persons referred to in clauses (a) to (e).

Disclosure of information

4 Right to inspect documents

- Subsection 29 (1) of the Act is amended by striking out "or" at the end of clause (e) and by adding the following clauses:

- (g) an employer;
- (h) a person required to make contributions under a pension plan on behalf of an employer; or
- (i) any other person prescribed by the regulations.

- Section 30 of the Act is repealed and the following substituted:

Inspection of filed documents

30. The individuals mentioned in clauses 29 (1) (a) to (i) and the administrator are entitled to inspect at the offices of the Superintendent, during business hours of

the Superintendent, the documents that comprise the pension plan and the pension fund and such other prescribed documents as are filed in respect of the pension plan and the pension fund, and are entitled to copies of the documents upon payment of the fee established by the Minister.

- Subsection 115 (1) of the Act is amended by adding the following clauses:

(aa) prescribing who may inspect documents and information in respect of the pension plan and the pension fund for the purposes of subsection 29 (1).

Benefits

5 Purchase of voluntary past service pension benefit

- Section 1 of the *Pension Benefits Act* is amended by adding the following definition:

"voluntary past service pension benefit" means that part of any pension benefit credited to the member under a pension plan pursuant to a contribution made voluntarily by the member in accordance with an election offered under the terms of the plan in respect of employment which had not been recognized previously under the plan for purposes of the member's pension benefits.

- Subsection 39 (5) of the Act is amended by adding the following paragraph:

3.1 Voluntary past service pension benefits.

6 Allow commuted values in excess of Income Tax Act limits to be paid in cash

- Section 42 of the Act is amended by adding the following subsection:

Payment to former member

(1.1) If the amount of the commuted value of the deferred pension of the former member to be paid into a prescribed retirement savings arrangement under clause 42 (1) (b) is greater than the amount prescribed for such a transfer under the *Income Tax Act* (Canada), the former member may require the administrator to pay that portion that exceeds the prescribed amount to the former member.

- Subsection 115 (1) of the Act is amended by adding the following clause:

(bb) prescribing retirement savings arrangements for the purposes of clause 42 (1) (b).

- Subsection 21 (1.3) of the Regulation is revoked and the following substituted:

(1.3) If the amount to be transferred is greater than the amount prescribed for such a transfer under the *Income Tax Act* (Canada), that portion that does not exceed the prescribed amount shall be transferred to a life income fund or a locked-in retirement account and the portion that exceeds the prescribed amount may be paid to the former member under subsection 42 (1.1) of the Act.

- Subsections 21 (1.4) and (1.5) of the Regulation are revoked.

- Subsection 21.1 (2) of the Regulation is revoked and the following substituted:

(2) A member with defined benefits who elects to convert them in accordance with the amendment to the pension plan is entitled to require the administrator to pay to the member that portion of the amount of the commuted value of the member's defined benefits that exceeds the amount prescribed under the *Income Tax Act* (Canada) for a transfer of benefits from a defined benefit provision of a pension plan to a money purchase provision of the same plan.

- Subsections 21.1 (3), (4) and (5) of the Regulation are revoked.

7 Waiver of pre-retirement death benefits

- Subsection 48 (14) of the Act is repealed and the following substituted:

Waiver

(14) The spouse of a member or former member may waive the spouse's entitlement under subsection (1) or (2) in a form approved by the Superintendent and where a spouse waives entitlement, subsections (6) and (7) apply as if the member or former member does not have a spouse on the date of the death of the member or former member.

Contributions

8 Plan administrator's duties re non-remittance of contributions / Pension fund holder's duties re non-remittance of contributions

•
Section 56 of the Act is repealed and the following substituted:

Administrator to ensure contributions paid

56.(1) The administrator of a pension plan shall make all reasonable efforts to ensure that any contributions that are not paid when due are remitted as required under subsection 55 (2).

Duty to report non-remittance of contributions

(2) Where the administrator makes all reasonable efforts to ensure that contributions under subsection (1) are remitted, but the contributions remain unpaid, the administrator shall give notice to the Superintendent within a reasonable period of time.

Summary of contributions

(3) The administrator of the pension plan shall deliver to the pension fund holder under subsection 22 (6) a summary of contributions required to be made for the fiscal year of the plan and the dates on which payments are due.

Revised summary of contributions

(4) Where there is a change in the summary of contributions under subsection (3), the administrator of the pension plan shall deliver to the pension fund holder a revised summary of contributions.

Notice to Superintendent re summary

(5) The pension fund holder shall give notice to the Superintendent of a summary of contributions that is not delivered in accordance with subsection (3).

Notice to Superintendent re unpaid contribution

(6) The pension fund holder who receives a summary of contributions under subsection (3) or a revised summary of contributions under subsection (4) shall give notice to the Superintendent of a contribution that is not paid when due.

When summary of contributions required

(7) The summary of contributions under subsection (3) and the revised summary of contributions under subsection (4) shall be given in a form approved by the Superintendent within the prescribed period of time.

When notice required

(8) Notice to the Superintendent under subsections (2), (5) and (6) shall be given in a form approved by the Superintendent and the notice under subsections (5) and (6) shall be given within the prescribed period of time.

Application of subs. (3 to 6)

(9) Subsections (3) to (6) do not apply to a multi-employer pension plan established pursuant to a collective agreement or trust agreement.

•
Subsection 115 (1) of the Act is amended by adding the following clause:

(cc) prescribing the time within which a summary of contributions and a revised summary of contributions shall be delivered and the time within which notice shall be provided to the Superintendent for the purposes of section 56.

•
The Regulation is amended by adding the following section:

54.1(1) For the purposes of subsection 56 (3) of the Act, the administrator of the pension plan shall deliver to the pension fund holder the summary of contributions required to be made for the fiscal year of the plan and the dates on which payments are due, within 90 days from the date the pension plan is established for the first fiscal year of the plan and within 60 days of the first day of each fiscal year, thereafter.

(2) For the purposes of subsection 56 (4) of the Act, where there is a change in the summary of contributions under subsection 56 (3) of the Act, the administrator of the pension plan shall deliver the revised summary of contributions to the pension fund holder, within 60 days of being advised of the change.

(3) For the purposes of subsection 56 (5) of the Act, the pension fund holder shall give notice within 60 days to the Superintendent of a summary of contributions that is not delivered in accordance with subsection 56 (3) of the Act.

(4) For the purposes of subsection 56 (6) of the Act, a pension fund holder who receives a summary of contributions under subsection 56 (3) of the Act or a revised summary of contributions under subsection 56 (4) of the Act shall give notice to the Superintendent within 60 days of a contribution due but not paid.

Winding up

9 Appointment/removal of administrator in insolvency

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Section 8 of the Act is amended by adding the following subsection:

Exception

(1.1) Despite subsection (1), a pension plan may be administered by any person appointed administrator by the Superintendent under section 71.

•

Section 71 of the Act is amended by adding the following subsection:

Removal of appointed administrator

(1.1) The Superintendent may remove an administrator appointed under subsection (1) where in the opinion of the Superintendent it is reasonable to do so.

10 Approval of surplus distribution at wind-up when some entitled persons cannot be located

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Section 79 of the Act is amended by adding the following subsection:

Whereabouts of person entitled unknown

(3.3) The Superintendent may consent to an application by an employer under this section where the whereabouts of a person entitled to payment of surplus are unknown to the applicant, if the Superintendent is satisfied that,

- (a) all reasonable efforts have been made to ascertain the whereabouts of the person entitled to payment of surplus, and
- (b) the applicant has made adequate provision for payment of surplus to the person mentioned in this subsection.

Financial Services Commission of Ontario

11 Authority to enter multi-jurisdictional agreements

- Section 95 of the Act is repealed and the following substituted:

Definitions

95.(1) In this section,

"Canadian jurisdiction" means Canada or a province or territory of Canada;

"pension legislation" means pension legislation, including regulations, of a Canadian jurisdiction other than Ontario, as prescribed;

"multi-jurisdictional pension plan" means a pension plan that is subject to this Act and the regulations and to pension legislation.

Agreement re multi-jurisdictional pension plans

(2) Subject to the approval of the Lieutenant Governor in Council, the Minister may enter into agreements with governments, government agencies or other persons that have supervisory or regulatory powers under pension legislation providing for matters related to,

- (a) the application of this Act and the regulations and of pension legislation to multi-jurisdictional pension plans; and
- (b) the supervision and regulation of multi-jurisdictional pension plans.

Delegation

(3) The Minister may delegate the Minister's function under subsection (2) to the Superintendent.

Effect of agreement

(4) If, under an agreement made under subsection (2), pension legislation applies to a multi-jurisdictional pension plan, that pension legislation, as it may be amended or re-enacted from time to time, shall, for the purposes of the multi-jurisdictional pension plan, be incorporated into this Act in accordance with the agreement, while the Minister remains a party to the agreement.

Same

(5) Pension legislation incorporated into this Act in accordance with subsection (4) shall, in accordance with the agreement and subject to any limitations or exceptions specified in it, supersede the provisions of this Act and the regulations as they would otherwise apply to the multi-jurisdictional pension plan.

Powers of Superintendent

- (6) The Superintendent, in accordance with an agreement made under subsection (2),
- (a) shall supervise and regulate multi-jurisdictional pension plans in accordance with this Act and the regulations;
 - (b) may delegate to the person that has supervisory or regulatory powers under pension legislation the functions and powers under this Act that the Superintendent may specify; and
 - (c) may accept delegations of functions and powers under pension legislation.

Agreement available

(7) The Superintendent shall make a copy of an agreement made under subsection (2) available for inspection.

Agreements

96. In addition to the powers referred to in section 95, the Superintendent may enter into agreements with authorized representatives of Canada or a province or territory of Canada for any purpose related to his or her powers, functions and duties under this Act and the regulations, including but not limited to agreements relating to the sharing of information with other jurisdictions, and any other type of prescribed agreement.

•
Subsection 115 (1) of the Act is amended by adding the following clauses:

- (ee) prescribing pension legislation for the purposes of section 95.
- (ff) prescribing types of agreements the Superintendent may enter into for the purposes of section 96.

General

12 Strengthen information gathering provisions

•
Section 106 of the Act is amended by adding the following subsections:

(5.1) A person mentioned in subsection (1) may prepare an opinion, report, or professional attestation based upon the results of the examination, investigation, and enquiries made by the person under this section.

(12) Where the Superintendent is of the opinion that it is reasonable and fair in the circumstances, the Superintendent may require an administrator, employer, pension fund holder or any other person to pay for some or all of the cost of any examination, investigation, opinion, report or professional attestation prepared under this section.

- Subsections 106 (1) and (2) of the Act are amended by striking out "subsections (3) to (5)" wherever it appears and substituting "subsections (3) to (5.1)".

- The Act is amended by adding the following section.

106.1 Where the Superintendent is of the opinion that it is reasonable and fair in the circumstances, the Superintendent may require an administrator, employer, pension fund holder or any other person to pay for some or all of the cost of any report required to be prepared under the Act or the regulations.

II. PROPOSED AMENDMENTS OF THE REGULATION

Definitions

13 References to accepted actuarial practice

- Clause 88 (2) (b) of the Act is repealed and the following substituted:

(b) that the assumptions or methods used in the preparation of a report required under this Act or the regulations in respect of a pension plan are not consistent with accepted actuarial practice.

- The definition of "going concern valuation" in subsection 1 (2) of the Regulation is revoked and the following substituted:

"going concern valuation" means a valuation of assets and liabilities of a pension plan using methods and actuarial assumptions considered by the

actuary who valued the plan to be consistent with accepted actuarial practice for the valuation of a continuing pension plan.

- Subsection 16 (1) of the Regulation is revoked and the following substituted:

(1) An actuary preparing a report under section 3, 5.3, 13 or 14 of this Regulation or section 70 of the Act shall use methods and actuarial assumptions consistent with accepted actuarial practice and with the requirements of the Act and this Regulation.

- Subsection 19 (1.2) of the Regulation is revoked and the following substituted:

(1.2) For purposes other than those of subsection 42 (1) of the Act and subsection 29 (2), the commuted value of a pension, deferred pension or ancillary benefit shall be calculated using methods and actuarial assumptions consistent with accepted actuarial practice.

14 Correction of typographical error in definition of “Ontario assets”

- The definition of "Ontario assets" in subsection 1 (2) of the Regulation is amended by striking out "(c)" in the last line and substituting "(e)".

Payments -- general

15 Discretion to extend time before designating actuary to prepare overdue funding report

- Subsection 4 (6) of the Regulation is amended by striking out "shall" in the first line and substituting "may".

- Subsection 4 (7) of the Regulation is revoked and the following substituted:

(7) Where the Superintendent causes a report on a plan to be prepared under subsection (6), the report shall,

- (i) be prepared by an actuary chosen by the Superintendent,
- (ii) contain the information required under section 3, 13 or 14, as the case may be, and
- (iii) be submitted by the actuary to the Superintendent.

- Subsection 4 (12) of the Regulation is revoked.

Special payments -- general

16 Flexibility to apply prior year credit balance

- Subsection 5 (16) of the Regulation is amended by revoking "Subject to subsections (13), (14) and (15)" in the first line and substituting "Subject to subsections (13), (14), (15) and (16.1)".

- Section 5 of the Regulation is amended by adding the following subsection:

(16.1) Despite subsection (16), for any report filed under section 3, 4, or 14 with a valuation date of December 31, 1998 or later, the prior year credit balance may be reduced to any amount less than the amount determined in accordance with subsection (16), but the amount cannot be less than zero.

Contribution requirements in year of report

17 Payment of previous under-contributions

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Section 12 of the Regulation is revoked and the following substituted:

12. Where a report required under section 3, 13 or 14 is filed or a report prepared under section 4 is submitted to the Superintendent, the employer shall, within sixty days of the date the report is filed or submitted, pay into the pension fund all amounts due under the report on the date of filing or submission, but not yet paid, plus interest on such amounts at the going concern or solvency valuation interest rate, as the case may be.

Reports

18 Cost certificate for defined contribution plans

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Section 3 of the Regulation is amended by adding the following subsection:

(2.1) Subsection (1) does not apply to a pension plan where all the pension benefits provided under the plan are defined contribution benefits.

•

Section 13 of the Regulation is amended by adding the following subsection:

(4) This section does not apply to a pension plan where all pension benefits provided under the plan are defined contribution benefits.

- Section 14 of the Regulation is amended by adding the following subsection:

(11) This section does not apply to a pension plan where all pension benefits provided under the plan are defined contribution benefits.

- Subsection 15 (1) of the Regulation is amended by striking out "referred to in" in the second line and substituting "required under".

- Subsection 15 (2) of the Regulation is amended by inserting "referred to in subsection (1)" after "certificates" in the first line.

19 Superintendent discretion to extend effective date of actuarial report

- Section 14 of the Regulation is further amended by adding the following subsection:

(12) The Superintendent may extend any interval between valuation dates referred to in this section on application of an administrator of a pension plan, if the Superintendent is of the opinion that there are reasonable grounds for granting the extension.

20 Calculation of Pension Benefits Guarantee Fund assessment

•
Clause 14 (8) (e) of the Regulation is revoked and the following substituted:

- (e) if a Guarantee Fund assessment is required to be paid,
 - (i) whether the PBGF assessment base is greater than zero; and
 - (ii) where the PBGF assessment base is greater than zero, the PBGF assessment base, the PBGF liabilities and, if applicable, the amount described in subclause 37 (4) (a) (ii).

Valuation

21 Requirement to file an actuarial information summary

•
The Regulation is amended by adding the following section:

16.1 Any report required to be filed under sections 3, 4, 13, or 14, shall be accompanied by an actuarial information summary in respect of the report, in a form approved by the Superintendent, and completed by the actuary who prepared the report.

22 Professional opinion solvency valuation unnecessary

•
Section 17 of the Regulation is amended by adding the following subsection:

(1.1) An actuary who prepares a report under subsection (1), need not perform the valuation referred to in that subsection if the actuary is of the

opinion that the solvency liabilities of the plan are less than the solvency assets of the plan and attests to this opinion in the report.

Interest

23 Clarify that interest is payable on outstanding contributions

- Subsection 24 (7) of the Regulation is revoked and the following substituted:

(7) Interest to be credited under this section shall accrue on contributions as of the first day of the month following the month in which the contributions were required to be paid into the pension fund, whether or not the contributions have been paid when due.

24 Correction of typographical error

- Subsection 24 (2) of the Regulation is amended by striking out "that" in the second line and substituting "than".

Commuted value and portability

25 Clarify restriction on transfers from a LIRA “prior to maturity”

- Clause 21 (2) (a) of the Regulation is amended by,
 - (a) striking out "prior to maturity," in the first line of subclause (i),
 - (b) striking out "prior to maturity," in the first line of subclause (ii), and
 - (c) striking out "prior to maturity," in the first line of subclause (iv)

Wind up notices

26 Settlement of benefits on wind-up

- Subsection 72 (1) of the Act is repealed and the following substituted:

Notice of entitlement

- (1) The administrator of a pension plan that is to be wound up in whole or in part shall, within the prescribed period of time, give to each person entitled to a pension, deferred pension or other benefit or to a refund in respect of the pension plan a statement setting out the person's entitlement under the pension plan, the options available to the person and any other prescribed information.

- Subsection 115 (1) of the Act is amended by adding the following clause:

- (dd) prescribing for the purposes of section 72, the time within which the administrator of a pension plan, that is to be wound up, shall give a statement to each person entitled to

a pension, deferred pension or other benefit or to a refund in respect of the pension plan, the information to be set out in any statement or notice, the time within which the person who receives a statement shall make an election, and the time within which the administrator shall make payment in accordance with the election.

- Subsection 28 (2) of the Regulation is amended by striking out "notice" in the second line and substituting "statement".

- Clause 28 (2) (q) of the Regulation is revoked.

- Section 28 of the Regulation is amended by adding the following subsections:

(2.1) The administrator shall give the statement referred to in subsection (2) within sixty days after the receipt of notice that the wind up report has been approved by the Superintendent.

(2.2) Despite subsection (2.1), where the Superintendent has approved the payment of benefits under subsection 70 (3) of the Act, the administrator shall give the statement referred to in subsection (2) to those persons affected by the Superintendent's approval within sixty days after the receipt of notice of the Superintendent's approval.

- Subsection 28 (4) of the Regulation is revoked and the following substituted:

(4) The administrator shall comply with an election made by a person under subsection (3) within sixty days after the later of,

(a) the receipt of the election; and

(b) the receipt of notice that the wind up report has been approved by the Superintendent.

(4.1) Despite subsection (4), where the Superintendent has approved the payment of benefits under subsection 70 (3) of the Act, the administrator shall comply with an election made by a person under subsection (3) within sixty days after the later of,

- (a) the receipt of the election; and
- (b) the receipt of notice of the Superintendent's approval.

(4.2) Where there is surplus on the wind up of a pension plan, the administrator shall give to each member, former member or any other person under section 72 of the Act, a statement setting out,

- (a) the name of the pension plan and its provincial registration number;
- (b) the member's name and date of birth;
- (c) the method of distribution of the surplus assets;
- (d) the formula for allocation of any surplus among the plan beneficiaries;
- (e) an estimate of the amount of surplus to be allocated to the person;
- (f) the options available to the person and the time period within which any option must be exercised;
- (g) the form of settlement, if an election is not made within the time specified;
- (h) notice of the person the recipient of the statement may contact with respect to any questions arising out of the statement; and
- (i) notice that the allocation of surplus and options are subject to the approval of the Superintendent and of Revenue Canada, and may be adjusted accordingly.

(4.3) The administrator shall give the statement referred to in subsection (4.2) within sixty days after the receipt of notice that the wind up report has been approved by the Superintendent.

(4.4) A recipient of a statement referred to in subsection (4.2) who is entitled to elect an option shall forward the election to the administrator within ninety days after receipt of the statement, or the recipient shall be deemed to have elected to receive the form of settlement referred to in the statement under subsection (4.2).

(4.5) The administrator shall comply with an election made by a person under subsection (4.4) with respect to the surplus on the wind up within sixty days after the later of,

- (a) the receipt of the election; and
- (b) the receipt of notice that the wind up report has been approved by the Superintendent.

27 Permitted use of CIA transfer values to determine commuted values on wind-up

•

Subsection 29 (2) of the Regulation is revoked and the following substituted:

(2) If a pension plan is being wound up in whole or in part, the minimum commuted value of a pension, deferred pension or ancillary benefit for the purposes of subsection 73 (2) of the Act shall be the amount determined as of the effective date of the wind up in accordance with the *Recommendations for the Computation of Transfer Values from Registered Pension Plans* issued by the Canadian Institute of Actuaries and effective September 1, 1993.

28 Calculation of Ontario wind-up liability

•
Subsection 29 (10) of the Regulation is revoked and the following substituted:

- (10) For the purposes of calculating the Ontario wind up liability of a plan, the liability of the plan in respect of each member or former member with benefits in respect of employment in Ontario is the sum of the liabilities of the plan,
- (a) for each benefit and other amount guaranteed for the benefit of the member or former member by the Guarantee Fund, excluding the amount by which the contributions in respect of the member or former member for the benefits and other amounts, plus interest, exceed the liability of the plan for the benefits and other amounts,
 - (b) for each benefit that relates to employment in Ontario to which the member or former member is entitled under section 74 (grow-in benefits) of the Act, but that is not guaranteed by the Guarantee Fund,
 - (c) for each benefit that relates to employment in Ontario of the member or former member that is vested at the effective date of the wind up under the terms of a plan, but not including,
 - (i) a benefit referred to in clause (a) or (b);
 - (ii) a benefit that relates to employment in Ontario that is vested only through the application of a provision of the Act or the regulations respecting termination or wind up of the plan; or
 - (iii) a benefit that relates to employment in Ontario that is vested only through the application of a provision of the plan respecting termination or wind up of the plan.
 - (d) for each benefit resulting from the application of subsection 39 (1) (value of deferred pension), 39 (2) (effect of amendment), 39 (3) (50 per cent rule) or 39 (4) (entitlement to excess amount) of the Act with respect to benefits that relate to employment in Ontario of the member or former member, to the extent that the liability is not included under clause (a), (b) or (c), and

- (e) in the case of a plan where the employer is making payments in accordance with section 75 (liability of employer on wind up) of the Act, a benefit referred to in subclause (c) (ii) or (c) (iii), to the extent that the liability is not included in clause (a), (b) or (d).

(10.1) For the purposes of subsection (10), the liability of the plan in respect of each member or former member does not include the liability for any benefit to the member or former member under a qualifying annuity contract.

Miscellaneous

29 Clarify that the CPP offset rule is to be calculated assuming benefits are payable at age 65

-

Clause 50 (a) of the Regulation is amended by revoking the definition of A in the formula and substituting:

A = the amount of pension payable to the person under the *Canada Pension Plan* or *Quebec Pension Plan* calculated as of the date of termination of the person's employment or membership and calculated as if the person had reached the age of 65 years at the date of termination.

Pension fund requirements

30 Harmonize with investment rules of the Pension Benefits Standards Act, 1985 (Canada)

-

The Regulation is amended by adding the following definition:

"*Pension Benefits Standards Act, 1985 (Canada)*" means the *Pension Benefits Standards Act, 1985 (Canada)*, as amended from time to time.

- Subsections 29.1 (2) and (3) of the Regulation are revoked.

- Paragraph 11 of subsection 45 (1) of the Regulation is revoked.

- Section 45 of the Regulation is amended by adding the following subsection:

(1.2) Copies of any statement of investment policies and procedures in respect of the pension plan's portfolio of investments and loans established in accordance with the requirements in the regulations made pursuant to the *Pension Benefits Standards Act, 1985 (Canada)* are prescribed documents for the purposes of section 29 of the Act.

- Sections 66 to 75 of the Regulation are revoked.

- Sections 77 to 82 of the Regulation are revoked and the following substituted:

77.(1) Despite the provisions of any plan or any instrument governing a plan, on or after January 1, 2000, the assets of a plan shall be invested in accordance with the investment requirements in the regulations made pursuant to the *Pension Benefits Standards Act, 1985 (Canada)*.

(2) The administrator shall, no later than January 1, 2000, establish a statement of investment policies and procedures in respect of the pension plan's portfolio of investments and loans in accordance with the regulations made pursuant to the *Pension Benefits Standards Act, 1985 (Canada)*.

(3) On or after the date the administrator establishes a statement of investment policies and procedures under subsection (2), the administrator shall comply with the provisions of the regulations made pursuant to the *Pension Benefits Standards Act, 1985* (Canada) regarding,

- (a) the submission of the statement of investment policies and procedures, and any amendments thereto, to the pension committee or actuary, as the case may be, and
- (b) the yearly review and confirmation or amendment of the statement of investment policies and procedures.

(4) Until the earlier of January 1, 2000, or the date the administrator establishes a statement of investment policies and procedures under subsection (2), every pension fund shall be invested in accordance with the investment requirements set out in Part II of Regulation 909 of the Revised Regulations of Ontario, 1990 as it existed on the day this section came into force.

(5) On or after the earlier of January 1, 2000, or the date the administrator establishes a statement of investment policies and procedures under subsection (2), every investment that is made by a pension plan shall be in compliance with the investment requirements in the regulations made pursuant to the *Pension Benefits Standards Act, 1985* (Canada).

(6) For the purposes of this section, any reference to the Superintendent in the regulations made pursuant to the *Pension Benefits Standards Act, 1985* (Canada) is deemed to be a reference to the Superintendent of Financial Services.

31 Financial Statements

•
Subsections 5.1 (1) and (2) of the Regulation are revoked and the following substituted:

(1) Where an employer has a plan that has more than \$500,000,000 of assets, calculated at market value as of the end of the fiscal year immediately preceding the date of election, and the plan is registered under the Act and is not a plan described in subsection 6 (1), the employer may file a written notice electing to have the plan treated as a qualifying plan for the purposes of this section.

(2) Where an employer has two or more plans that together have more than \$500,000,000 of assets, calculated at market value as of the end of the fiscal year immediately preceding the date of election, each of the plans is registered under the Act and none of the plans is a plan described in subsection 6 (1), the employer may file a written notice electing to have all of the plans treated as qualifying plans for the purposes of this section.

•
Paragraph 2 of subsection 29.1 (1) of the Regulation is revoked.

•
Paragraph 8 of subsection 45 (1) of the Regulation is revoked and the following substituted:

8. Copies of any report under section 3, 4, 5.3, 13 or 14 filed in respect of the pension plan.

•
Paragraph 12 of subsection 45 (1) of the Regulation is revoked and the following substituted:

12. Copies of any annual investment certificate filed under section 76.

- Section 45 of the Regulation is amended by adding the following subsection:

(1.1) Copies of annual financial statements for the pension fund for the period within five years preceding the date of the request on file with the administrator of the plan are prescribed documents for the purposes of section 29 of the Act.

- Paragraph 6 of section 47.1 of the Regulation is revoked.

- Paragraph 6 of section 47.2 of the Regulation is revoked.

- Section 76 of the Regulation is revoked and the following substituted:

76.(1) The administrator shall prepare financial statements, or cause financial statements to be prepared, for the pension fund as at the pension plan's fiscal year end.

(2) If, at the fiscal year end of a pension plan, the pension fund has \$3,000,000 or more in assets calculated at market value the administrator shall obtain an auditor's report respecting the financial statements.

(3) The auditor's report referred to in subsection (2) shall be prepared by an accountant.

(4) The financial statements shall be comprised of a statement of net assets and a statement of changes in net assets and shall be prepared on the accrual basis of accounting.

(5) The financial statements shall be prepared in accordance with generally accepted accounting principles.

(6) The auditor's report referred to in subsection (2) shall be prepared in accordance with generally accepted auditing standards.

(7) Subject to the requirements of this section, the financial statements and the auditor's report shall be prepared in accordance with the principles and standards set out in the Handbook of the Canadian Institute of Chartered Accountants.

(8) The administrator shall file an annual investment certificate, in a form approved by the Superintendent, within six months after each fiscal year end of the pension plan commencing for the year end which is on or after December 31, 1999.

(9) The pension fund holder of the pension plan or an auditor, as the case may be, shall certify in the annual investment certificate that the assets of the pension plan are invested in accordance with the investment requirements in the regulations made pursuant to the *Pension Benefits Standards Act, 1985* (Canada).

(10) A pension fund holder may certify in the annual investment certificate that the assets of the pension plan are invested in accordance with the investment requirements in the regulations made pursuant to the *Pension Benefits Standards Act, 1985* (Canada) where all of the following conditions are met,

(a) all of the assets of the pension fund are held by a single trust corporation registered under the *Loan and Trust Corporations Act* or a single insurance company,

(b) the pension plan is not a multi-employer pension plan,

(c) the investments of the pension fund are made in accordance with the related party rules set out in the regulations made pursuant to the *Pension Benefits Standards Act* (Canada), and

(d) the Superintendent has not requested an auditor to certify compliance under subsection (5).

(11) An auditor shall certify in the annual investment certificate that the assets of the pension plan are invested in accordance with the investment requirements in the regulations made pursuant to the *Pension Benefits Standards Act, 1985* (Canada) for any pension plan that does not meet the conditions of subsection (3) or where the pension fund holder will not certify compliance.

(12) The Superintendent may require an auditor to certify in the annual investment certificate that the assets of the pension plan are invested in accordance with the investment requirements in the regulations made pursuant to the *Pension Benefits Standards Act, 1985* (Canada).