THE PENSION BENEFITS DIVISION ACT
Where Funds May Be Transferred

The *Pension Benefits Division Act* (PBDA) provides that a division of pension benefits will be accomplished by transferring the amount to a specified financial vehicle selected by the spouse or former spouse of the member. The type of vehicle available usually depends on whether the member whose pension benefits are being divided is vested.

Vested members of a plan have met the minimum service thresholds for entitlement to pension benefits such as an annual allowance, an immediate annuity, or a deferred annuity. Non-vested members would be entitled only to a return of their own contributions to the plan plus interest. There are different vesting thresholds associated with each plan covered by the PBDA, depending upon the specific requirements of that plan. The threshold for employees of the Public Service is two years.

Upon receipt of a valid application where no valid objections are filed, the member's pension benefits are valued and then divided. Since vested members are entitled to more valuable benefits than non-vested members, the value is higher and there is a larger amount available for transfer. Since these more valuable benefits cannot be received except as a stream of monthly payments, there is a requirement that money transferred will also culminate in a stream of monthly payments. This can be as a life annuity, a Life Income Fund, or similar vehicle. The PBDA and the *Pension Benefits Division Regulations* (PBDR) set out where the money may be transferred. Sections of the federal *Pension Benefits Standards Act, 1985* (PBSA) and *Pension Benefits Standards Regulations* (PBSR) are also referenced.

Vehicles Acceptable for Division of Vested Members' Benefits

The division amount may be transferred to one or several of the following vehicles:

1. A Registered Pension Plan

   If the spouse or former spouse is a member of a registered pension plan, the funds may be transferred to that plan if the plan will accept the money. The plans covered by the PBDA generally cannot accept funds, unless the spouse already owes money to the plan or is in a position to make an election to pick up service for which an obligation to pay into the plan will be created. Once having made the election, the plan can accept up to the amount required to pay for the election.

2. A retirement savings plan as specified in the PBSR

   Funds may be transferred into a locked-in Registered Retirement Savings Plan (RRSP) or into a Life Income Fund (LIF) as defined in the PBSR. The conditions attaching to such a retirement savings plan or fund are set out in the regulations to the PBSA. These regulations require, amongst other things, that the funds in a locked-in RRSP may only be transferred to another locked-in RRSP, to a LIF, to registered pension plan if it will accept the funds, or to purchase an annuity. Funds in a LIF are subject to annual minimum and maximum withdrawal limits and must be converted no later than age 80 to a life annuity. LIF funds may only be transferred to another LIF, a locked-in RRSP or to purchase an annuity. Any questions concerning these requirements should be directed to the financial institution that will be receiving the funds.

3. A financial institution for the purchase of a life annuity, either deferred or immediate, of the type set out in the PBSA and PBSR

   Life annuities must be issued by a company authorized to carry on a life insurance business in Canada. Insurance companies are licensed under provincial legislation.

In the first two cases, a standard Canada Customs and Revenue Agency form (T2151) will be required from the destination institution to certify that the plan or fund is registered under the Income Tax Act (ITA). With the exception of registered pension plans, the institution receiving the funds will need to certify that the plan or fund complies with the PBSA or that the funds are being used to purchase a life annuity. A standard form is provided to the spouse for this purpose.

Vehicles Acceptable for Division of Non-vested Members' Benefits

The division amount may be transferred to one or several of the following vehicles:

1. a RRSP, or a Registered Retirement Income Fund (RRIF), as such are defined in the ITA; or

2. any of the vehicles set out for vested members.

The Canada Customs and Revenue Agency form (T2151) will be required from the destination institution to certify that the plan or fund is registered under the Income Tax Act (ITA) or certification that the transfer is being applied to the purchase of an annuity.

Exceptions

1. If the payment is coming out of a Retirement Compensation Arrangement, it will be payable directly to the spouse, or former spouse.

2. If the spouse or former spouse is deceased when the funds are to be transferred, payment will be made to the spouse's, or former spouse's, estate.

In both of these cases, tax will be deducted at source at the rates required by the Canada Customs and Revenue Agency.

Common Questions

Q. When can I begin receiving payments from a locked-in account?

A. This depends on the terms of the arrangement you make with the financial institution or life insurance company. You may wish to consult with a number of institutions to find an arrangement that suits your needs.

Q. What pensions standards legislation applies to the federal public service plans?

A. The federal public service plans are not subject to the pensions standards legislation of the provinces or the federal Pension Benefits Standards Act. Restrictions are contained in the plans themselves specifying when the member is able to choose only an annuity-type benefit.

Q. Why are division payments locked-in if the member is vested?

A. Since PBDA payments are made in a lump-sum, the Act imposes a lock-in requirement to ensure that the character of the benefit as an annuity is maintained. Since the plan itself is not subject to a particular set of lock-in rules, the PBDA allows the spouse to choose an account that meets the lock-in provisions of the federal PBSA, to transfer the funds to a registered pension plan or to purchase a life annuity directly.