



GUIDELINE No. 2

February 2002

Electronic Communication in the Pension Industry

Please note that this document has been prepared to facilitate electronic communication between pension plan administrators and pension plan members where permitted by law. It should not be construed as the official position of any provincial or federal government or agency.

The potential benefits of electronic communication in the pension industry are readily identifiable. They include reduced administrative costs, enhanced service to plan members and improved fiduciary monitoring. CAPSA believes that electronic communication should not be discouraged by pension regulations, provided some basic protections are in place. This document is intended to help pension plan administrators and pension plan members apply the provisions of applicable electronic commerce legislation to pension communications required under pension benefits legislation in each jurisdiction. It sets out appropriate guidelines for electronic communication between pension plan administrators and plan members.

BACKGROUND

Like many laws, pension benefits standards legislation in Canada implies the use of paper documents. The words “written”, “in writing”, “signed” or “certified”, for instance, are used throughout the legislation.

The growth of electronic communication in personal, professional and business applications, widespread use of electronic mail, and increasing acceptance of the Internet as a basic information tool have raised the issue of accommodating paperless communication under pension law.

Responding to questions from industry stakeholders and the passage of electronic commerce legislation in several Canadian jurisdictions, CAPSA prepared draft guidelines on electronic communications in the pension industry which were distributed for broad consultation in May 2001. CAPSA gratefully acknowledges the many constructive suggestions received from industry stakeholders during this national consultation.

The guidelines are intended to apply to electronic communication between a pension plan administrator and a pension plan member where a requirement to do so exists in pension legislation. The guidelines are not written to cover other types of communication that arise in pension plan administration. They are also not intended to require administrators to communicate electronically.

The guidelines may create implementation issues for plan administrators. For example, how does an administrator ensure that electronic signatures are “reliable for the purpose of identifying the plan member”? The answer lies in the technology available to the administrator. Electronic commerce law should be technologically neutral. Regulations should not tie electronic communication to a specific technology or process that may become obsolete or irrelevant as new technologies or processes develop. Therefore, technological solutions to the challenges raised by these guidelines will not be addressed by CAPSA. However, pension regulators remain interested in how the guidelines are applied by plan administrators.

Each jurisdiction will have to address whether the guidelines should be adopted and in what form. These guidelines do not override existing electronic commerce legislation, nor do they create legal rights or obligations in those jurisdictions where electronic commerce legislation does not exist. Furthermore, the guidelines do not address privacy issues.

References in the guidelines to “plan member” should be read to include an active plan member, a deferred plan member, a retired plan member, or a spouse or beneficiary of an active, deferred or retired plan member. Reference to “plan administrator” includes agents employed by a plan administrator in the administration of a pension plan. The term “document” is intended to include information or data.

RECOMMENDED GUIDELINES

1.0 Legal recognition

The transfer of a document between a plan administrator and a plan member should not be denied legal effect or enforceability solely by reason that it is in electronic form.

2.0 Use not mandatory

A plan member should not be required to use, provide or accept a document in electronic form, unless the plan member gives consent or there is deemed consent.

3.0 Consent of plan member

3.1 The consent of a plan member to receive an electronic document should be deemed to have been given if an information system has been designated to the plan administrator by the plan member for the purpose of receiving documents of the type sent.

3.2 Consent should not be deemed to have been given unless the plan administrator informs the plan member that:

- designation of an information system to the plan administrator for the purpose of receiving documents of the type sent constitutes deemed consent to receive such documents,
- the plan member may revoke the deemed consent at any time, either in writing or electronically,
- the plan member may request a paper version of any documents by notifying the plan administrator,
- the plan administrator will provide the plan member with a paper copy of any document if electronic delivery fails, and
- the plan member may at any time change the plan member's designated information system by notifying the plan administrator either in writing or electronically.

3.3 The plan administrator must inform the plan member of the aforementioned before the first time an electronic document is sent to the plan member and with each electronic document sent thereafter.

4.0 Requirement for information to be in writing

4.1 A requirement under pension benefits standards legislation for a plan administrator to provide a written document to a plan member or vice versa may be satisfied by

electronic means.

- 4.2 An electronic document must be accessible by the recipient of the document and capable of being retained by the recipient so as to be usable for subsequent reference. This means a document must be capable of being opened and viewed, printed, downloaded or saved to file.

5.0 Providing information in a specific form

- 5.1 A requirement under pension benefits standards legislation for a plan administrator to provide a document to a plan member or vice versa in a specified form may be satisfied by electronic means.
- 5.2 The information in an electronic document must be provided in the same or substantially the same form as the written document.
- 5.3 An electronic document must be accessible by the recipient of the document and capable of being retained by the recipient so as to be usable for subsequent reference.

6.0 Electronic signature

- 6.1 A requirement under pension benefits standards legislation for the signature of a plan member may be satisfied by an electronic signature.
- 6.2 An electronic signature must be reliable for the purpose of identifying the plan member in light of all the circumstances and any relevant agreement between the plan administrator and the plan member at the time the electronic signature is made.
- 6.3 An electronic signature must be reliable for the purpose of associating the electronic signature with the relevant electronic document in light of all the circumstances and any relevant agreement between the plan administrator and the plan member at the time the electronic signature was made.

7.0 Provision of originals

- 7.1 A requirement under pension benefits standards legislation for a plan administrator or plan member to present or retain an original document may be satisfied by the provision or retention of an electronic document.
- 7.2 A reliable assurance must exist as to the integrity of the information contained in the electronic document from the time it was first made in its final form. The criterion for assessing integrity is whether the information has remained complete and unaltered, apart from the introduction of any changes that arise in the normal course of communication, storage and display. The standard of reliability required should be assessed in light of the purpose for which the document was made and in light of all the circumstances.
- 7.3 An electronic document must be accessible by the plan member or plan administrator

and capable of being retained by the plan member or plan administrator so as to be usable for subsequent reference.

8.0 Whether a document is capable of being retained

8.1 An electronic document should be deemed not to be capable of being retained so as to be usable for subsequent reference if the person providing the electronic document inhibits the printing or storage of the electronic document by the recipient.

9.0 Retention of documents

9.1 A requirement under pension benefits standards legislation to retain a document may be satisfied by the retention of an electronic document.

9.2 An electronic document must be retained in the format in which it was made, sent or received, or in a format that accurately represents the information contained in the document that was originally made, sent or received.

9.3 The information in the electronic document must be accessible so as to be usable for subsequent reference by any person who is entitled to have access to the document or who is authorized to require its production.

9.4 Where an electronic document was sent or received, information that identifies the origin and destination of the electronic document and the date and time when it was sent or received must also be retained.

10.0 Other requirements continue to apply

Nothing in these guidelines should limit the operation of any requirement under pension benefits standards legislation for any information or document to be posted or displayed in specified manner, or for any information or document to be transmitted by a specified method. If, for instance, legislation requires a notice to be placed in newspapers, then an e-mail sent to plan members would not suffice.

11.0 Sending and receiving electronic documents

- 11.1 Unless the originator and the recipient agree otherwise, an electronic document should be considered sent when it enters an information system outside the control of the originator or, if the originator and the recipient are in the same information system, when it becomes capable of being retrieved and processed by the recipient.
- 11.2 An electronic document should be presumed to be received by the recipient when it enters an information system designated to the originator by the recipient for the purpose of receiving documents of the type sent, and it is capable of being retrieved and processed by the recipient.

12.0 Use of a web site for the posting of documents

- 12.1 Where an electronic document relates to a plan member, the plan administrator should be able to post the electronic document on the web site of the plan administrator. However, an electronic document is not provided to a plan member if it is merely made available for access by the plan member.
- 12.2 Notice must be provided to the plan member informing them that the electronic document has been posted on the web site and is available to them.
- 12.3 The electronic document must be accessible by the plan member and capable of being retained by the plan member so as to be usable for subsequent reference.
- 12.4 The electronic document must remain confidential and accessible only by the plan member by means of a password or other unique identification system.

For additional information on this guideline, please contact:

*CAPSA Secretariat
5160 Yonge Street, P.O. Box 85
Toronto ON M2N 6L9
Tel. (416) 226-7773; Fax (416) 590-7070*

All CAPSA Guidelines are posted on the CAPSA website at www.capsa-acor.org.