



HIGHLIGHTS OF *THE PENSION BENEFITS AMENDMENT REGULATIONS, 2006*

Introducing a Variable Benefit under a Defined Contribution Plan

The Pension Benefits Regulations, 1993 (Regulations) were amended by *The Pension Benefits Amendment Regulations, 2006* effective May 10, 2006. The amendments will allow, but not require, a defined contribution plan to offer a Variable Benefit to members and former members who are eligible to retire. The Variable Benefit is similar in nature to the existing prescribed Registered Retirement Income Fund (pRRIF) option under the Regulations which is available through financial products offered in the private market place.

The Variable Benefit will provide members or former members of a defined contribution plan with an additional alternative for receiving pension income directly from the plan. Retirees will be able to determine how much income is withdrawn annually, subject to the minimum withdrawal required by the *Income Tax Act* and how the money is invested. Investment earnings will continue to grow on a tax-sheltered basis.

A defined contribution plan that offers the Variable Benefit has the option of permitting individuals who had previously transferred assets out of the plan to transfer those assets back to the plan in order to establish a Variable Benefit Account. The plan provisions will need to be amended to specifically permit such transfers.

The Regulations also accommodate phased retirement at the discretion of the plan sponsor. A defined contribution plan may allow a member to continue to work while receiving a Variable Benefit from the plan. The plan provisions will need to be amended to facilitate phased retirement.

Establishing a Variable Benefit

In order to establish a Variable Benefit, a member or former member must meet the plan's early retirement provision. The plan may permit partial transfers or may require that the member or former member transfer the full value of their defined contribution account to a Variable Benefit Account. It should be noted that the following spousal consent and waiver requirements must be met each time a transfer of assets occurs and applies only to the amount being transferred.

Because there is no limit to the amount that may be withdrawn from a Variable Benefit Account, the member or former member's spouse must sign a consent form which authorizes the member or former member to establish a Variable Benefit Account. The form for this purpose is *Form 2.01 – Spouse's Consent to Transfer to a Variable Benefit Account* prescribed by subclause 29.2(3)(b)(i) of these Regulations. A copy of this new consent form can be found on our web site.

As well, because the Variable Benefit is defined as a pension under the Regulations, the member or former member's spouse must also sign a waiver form which acknowledges that a survivor benefit equal to at least 60% of the member's pension is no longer guaranteed upon the death of the member or former member. The form for this purpose is *Form 3 – Spouse's*

Waiver of Post-Retirement Survivor Benefit, which is prescribed under subsection 34(4) of *The Pension Benefits Act*. A copy of this waiver form can be found on our web site.

Where assets are being transferred from a pRRIF, another Variable Benefit Account or non-locked-in retirement savings arrangements, the above spousal consent and waiver requirements do not apply.

Plan administrators and financial advisors should ensure that the spouse is fully informed of his or her entitlement to the survivor benefit provided under section 34 of *The Pension Benefits Act, 1992*, and is aware of the implications of signing the consent and waiver forms.

The administrator of the defined contribution plan that offers the Variable Benefit must retain copies of the consent and waiver forms in the plan's records.

Eligible Transfers to a Variable Benefit Account

After a Variable Benefit Account is established, the plan may permit, to the extent permitted by the *Income Tax Act*, the member or former member to transfer assets to the account from:

- another plan;
- a Locked-In Retirement Account (LIRA) contract;
- a prescribed Registered Retirement Income Fund (pRRIF) contract;
- a Life Income Fund (LIF) contract;
- a Locked-In Retirement Income Fund (LRIF) contract;
- a Registered Retirement Savings Plan; or
- a Registered Retirement Income Fund.

Once non-locked-in assets are transferred to a Variable Benefit Account, those assets are subject to the terms of the plan and the Regulations.

Eligible Transfers from a Variable Benefit Account

A member or former member may elect to transfer part or all of the assets held in a Variable Benefit Account to:

- another plan;
- a Locked-In Retirement Account (LIRA) contract;
- a prescribed Registered Retirement Income Fund (pRRIF) contract; or
- a life annuity contract that meets the requirements of Section 34 of the Act.

Designation of Beneficiary under a Variable Benefit

A Variable Benefit has two kinds of beneficiaries – a “specified beneficiary” and other beneficiaries. The *Income Tax Act Regulations* allow the member or former member to designate his or her spouse as a “specified beneficiary”. This type of designation would permit the payments being made to a member or former member from a Variable Benefit Account to continue to the spouse upon the death of the member or former member. The spouse would also have the choice of transferring the assets out of the Variable Benefit Account. All other beneficiaries are required to receive a lump sum payout pursuant to the *Income Tax Act*.

A member or former member who establishes a Variable Benefit Account must designate a beneficiary. Where the member or former member has a spouse, the spouse must be the beneficiary of the Variable Benefit Account unless the spouse elects to waive his or her entitlement. The definition of "spouse" under clause 2(1)(ff) of *The Pension Benefits Act, 1992* is:

"(ff) **"spouse"** means:

(i) a person who is married to a member or former member; or

(ii) if a member or former member is not married, a person with whom the member or former member is cohabiting as spouses at the relevant time and who has been cohabiting continuously with the member or former member as his or her spouse for at least one year prior to the relevant time."

A spouse may waive his or her designated beneficiary status under a Variable Benefit Account by signing a waiver. The waiver form for this purpose, *Form 2.02 - Spouse's Waiver of Designated Beneficiary Status under a Variable Benefit Account*, is prescribed by clause 29.2(3)(g) of the Regulations. A copy of this waiver form can be found on our web site.

The waiver must be signed before the death of the member or former member and must be filed with the administrator of the plan. A spouse may revoke a signed waiver at any time prior to the death of the member or former member, by providing written notice to the administrator of the plan.

Disclosure Requirements

The administrator of a plan that offers a Variable Benefit must provide members and former members with an annual statement at the beginning of each calendar year that contains the following information:

- a summary of the transactions made in the previous year;
- the balance remaining at the end of the previous year;
- the minimum amount determined with respect to the current year; and
- the date of birth on which the minimum withdrawal amount has been determined.

Changes to Locked-In Retirement Account (LIRA) Regulations

A change was made to the LIRA Regulations which will now permit a LIRA contract to accept non-locked-in assets without the need for those assets to be held in a separate account. This change will permit owners of LIRA contracts to co-mingle their personal retirement savings plans with their locked-in assets in order to simplify administration of their retirement savings. Where non-locked-in assets are transferred to a LIRA contract, those assets are subject to the Regulations and the contractual provisions of the LIRA.

Financial Institutions that issue LIRA contracts will need to review those contracts to determine if an amendment is required in order to accept non-locked-in funds and they wish to provide this option to their clients. Most existing LIRA contracts contain provisions that would prohibit the co-mingling of non-locked-in assets with locked-in assets.

Changes to Prescribed Registered Retirement Income Fund (pRRIF) Regulations

Changes were also made to the pRRIF Regulations which will permit the transfer of assets from a pRRIF contract to a defined contribution plan that offers a Variable Benefit and is willing to accept the transfer, and to allow a pRRIF contract to accept non-locked-in assets. Where non-locked-in assets are transferred to a pRRIF contract, those assets are subject to the Regulations and the contractual provisions of the pRRIF.

Financial Institutions that issue pRRIF contracts will need to amend those contracts to provide for a transfer to a plan that offers a Variable Benefit. As well, existing pRRIF contracts will need to be amended in order to accept non-locked-in funds if the issuer wishes to provide this option to their clients.

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