Financial Services Commission of Ontario
Commission des services financiers de l'Ontario

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Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.

Note: Bill 171, the Spousal Relationships Statute Law Amendment Act, 2005 (S.O. 2005, c. 5) and Ontario Regulation 324/05 amended the definition of "spouse" in section 1 of the PBA and removed reference to "same-sex partner" from the PBA and the Regulation as of June 13, 2005. This policy has been updated solely for purposes of reflecting this change. For further details see policy S500-101. No other changes to this policy have been made since the effective date.

Introduction: Locked-In Accounts under the *Pension Benefits Act*

The introduction of pension reform in the mid-1980's, specifically the areas of portability options and commuted values, paved the way for the transfer of pension money to locked-in accounts in Ontario. Clause 42(1)(b) of the *Pension Benefits Act,* R.S.O. 1990, c. P.8 ("PBA"), provides that a former member of a pension plan who, on or after January 1, 1988, terminates employment or ceases to be a member of the pension plan and who is entitled to a deferred pension, is entitled to require the administrator to pay an amount equal to the commuted value of the deferred pension into a *prescribed retirement savings arrangement* (which is referred to in this policy as a "locked-in account"). Previously, when members of a pension plan terminated employment or plan membership, their only recourse was to leave the accrued benefit in their former employer's pension fund and arrange to be paid a pension at retirement age.

By allowing for the direct transfer of the commuted value of former members' pension benefits into locked-in accounts, the PBA gives individuals greater control over their retirement monies. To ensure that locked-in accounts reflect certain principles of pension plans, the legislation contains restrictions that are intended to preserve the money for retirement and

provide a lifetime stream of retirement income for former members and their spouse, if any. These restrictions are generally referred to as the locking-in rules.

This policy will provide an overview of locking-in and review certain rules common to all locked-in accounts. The rules and requirements that apply to each specific type of locked-in account will be the subject of other policies.

Administration of Locked-In Accounts: Responsibilities of Plan Administrators and Financial Institutions

Locked-in accounts include Locked-In Retirement Accounts (ALIRAs”), Life Income Funds (ALIFs”) and Locked-In Retirement Income Funds (“LRIFs”). To ensure that these savings accounts receive special tax-assisted treatment under the *Income Tax Act* (Canada) (AITA”), LIRAs must comply with the ITA requirements for Registered Retirement Savings
Plans (ARRSPs”), and LIFs and LRIFs must comply with the ITA requirements for Registered Retirement Income Funds (ARRIFs”). This policy will refer to LIRAs, LIFs and LRIFs collectively as Alocked-in accounts”.

In accordance with subsection 20(3) of the Regulation 909 made under the PBA (Athe Regulation”), transfers from pension funds to locked-in accounts are permitted only if the financial institutions that issue the accounts agree to administer the transferred funds, including all earnings, as a pension or deferred pension in accordance with the PBA and Regulation. In other words, the financial institution must, among other things, ensure that the money remains locked-in.

The rules which prevent money in locked-in accounts from being unlocked are found in section 67 of the PBA: a pension, deferred pension, pension benefit, annuity *or prescribed retirement savings arrangement* that results from a purchase or transfer under section 42, 43 or 48 or subsection 73(2) to which a person is entitled is not capable of being commuted or surrendered, in whole or in part, during the person’s life. Corresponding restrictions are found in section 21 of the Regulation for LIRAs, subsection 3(1) of Schedule 1 for LIFs, and subsection 3(1) of Schedule 2 for LRIFs.

When members wish to transfer their locked-in account from one financial institution (Athe transferor”) to another (Athe transferee”), the transferor must receive confirmation that the money will remain locked-in before making the transfer. Locked-in accounts can only be transferred to other locked-in accounts, or in certain circumstances, to pension funds (that are also locked-in).

Pension legislation provides certain rights and entitlements to the spouses of pension plan members if the member dies prior to retirement, and also after the member begins to receive a retirement income. Spouses continue to have this protection when pension money is transferred to locked-in accounts. For each type of locked-in account, there are specific requirements governing survivor benefits, which are discussed in separate policies dealing specifically with LIRAs, LIFs and LRIFs. [Note: The use of the term Aspouse” in this policy has the same meaning as Aspouse” as defined in the PBA, which includes a common-law spouse.]

When financial institutions fail to administer locked-in accounts as required, they are in contravention of the PBA. In addition to any action that may be taken by FSCO, if financial institutions release locked-in funds in contravention of the PBA or do not comply with the survivor benefit requirements, spouses who may be denied their rights and benefits provided under pension legislation may initiate legal proceedings against the financial institutions involved.

How to Administer Locked-In Accounts: Multi-jurisdictional Considerations

Subsection 20(3) of the Regulation prohibits the administrator or the agent of the administrator of a registered pension plan (the initial transferor) from making a transfer from a plan fund unless the financial institution to which the money is transferred (the transferee) agrees to administer the funds as a pension or deferred pension (e.g., locked-in). When locked-in money is subsequently transferred to another financial institution, the new institution must also administer the funds as a pension or deferred pension.

While pension legislation of each jurisdiction in Canada which regulates pension plans permits the transfer of money from a registered pension plan to a locked-in account, there are differences in each jurisdiction's rules. Financial institutions that administer locked-in accounts are responsible for administering them as a pension or deferred pension.

The key to understanding the rules that determine how any individual transfer amount must be administered is knowing which pension legislation originally applied to the member under the plan; the legislation of that jurisdiction will continue to apply after the transfer. Where the money is being transferred in accordance with the PBA and Regulation to a financial institution in another Canadian jurisdiction, all parties must ensure that the transfer satisfies Ontario's rules, i.e. that the funds in the locked-in account continue to be administered in accordance with Ontario pension law.

Pension Legislation in Canada

Registered pension plans must be registered under the statute of one of the following federal or provincial jurisdictions in Canada:

Alberta	*Employment Pension Plans Act*
British Columbia	*Pension Benefits Standards Act*
Manitoba	*Pension Benefits Act*
New Brunswick	*Pension Benefits Act*
Newfoundland	*Pension Benefits Act, 1997*
Nova Scotia	*Pension Benefits Act*
Ontario	*Pension Benefits Act*
Québec	*Supplemental Pension Plans Act*
Saskatchewan	*Pension Benefits Act, 1992*
Federal (Canada)	*Pension Benefits Standards Act, 1985* (Canada)

The *Pension Benefits Standards Act, 1985* (Canada) ("PBSA (Canada)") is the federal statute which regulates pensions for plan members who work in Aincluded employment". Transfers of locked-in money made on behalf of persons who worked in included employment must be administered as required by the PBSA (Canada). Included employment is work in any undertaking or business that is within the legislative authority of the Parliament of Canada (e.g., broadcasting, transportation, banking, etc.). A complete definition of included employment is contained in the PBSA (Canada). Pension plan members who are employed in the Northwest Territories, Yukon Territory and Nunavut are also covered by the PBSA (Canada).

Provincial statutes regulate pensions for plan members who are employed in those provinces and who do not work in included employment. The administration of locked-in money transferred on behalf of a person who terminates employment in a specific province continues to be subject to that provincial statute. If a plan member does not actually report to work in any one province, that individual is considered to be employed in the province where the employer who pays the individual's remuneration has an office or an establishment.

Pension Plans with Members in More than One Province

If all the members of a pension plan are employed in one province, the plan must be registered under the statute of that province. That statute will regulate how the plan is funded and administered. The statute will also regulate how and when portability options become available to the members of the plan. All locked-in transfers from the pension plan must be administered as required by the statute of the jurisdiction of registration. Similarly, if all of the members of a pension plan are employed in included employment, the plan must be registered under the PBSA (Canada). All matters related to that plan are subject to the requirements of the PBSA (Canada).

The administration of a pension plan and any locked-in transfers made from that plan becomes more complex where all plan members are not employed in one province or are not all employed in included employment. Where plan members work in two or more jurisdictions, the pension plan is registered in the jurisdiction where the majority of the plan members are employed. The province of registration does not dictate the portability options; this is determined by the province of employment as outlined above.

For example, where a pension plan registered under the Ontario PBA also has members who work in included employment and members who are employed in Alberta, the Ontario statute regulates all matters, including portability, for only the Ontario members. The federal PBSA applies to members in included employment and the Alberta *Employment Pension Plans Act* regulates all matters for the Alberta members. Locked-in money transferred with respect to the Ontario members remains subject to the Ontario PBA. This means that any transfer to a locked-in account belonging to an Ontario member is permitted only where the locked-in account issued by a financial institution meets Ontario's requirements.

Contracts of Locked-In Accounts Approved by Other Jurisdictions May Not Meet Ontario's Requirements

Some jurisdictions require specimen documents for locked-in accounts to be submitted to the respective regulatory authority for approval, and maintain approved lists of financial institutions that provide locked-in accounts which meet the requirements of their respective legislation. Such a list of approved vendors or contracts, however, only indicates compliance with the legislation of the jurisdiction that maintains the list.

Ontario does not maintain a list of approved financial institutions that provide locked-in accounts and does not require that specimen documents be submitted for approval. A plan administrator who is making a transfer with respect to an Ontario member is subject to subsection 20(3) of the Regulations, and thus cannot complete the transfer until the transferee has agreed to continue administration in accordance with the requirements of the PBA and Regulation. The Regulation also contains specific requirements for LIRAs, LIFs and LRIFs that the financial institution must abide by.

Recent Ontario Changes Affecting Locked-In Accounts: Shortened Life Expectancy, Small Amounts, Amounts that Exceed ITA Limits, and Financial Hardship

Effective March 3, 2000, the *Pension Benefits Statute Law Amendment Act, 1999* ("PBSLAA") amended the PBA in the following ways with respect to locked-in accounts:

1. Shortened Life Expectancy

Before March 3, 2000, subsection 49(1) of the PBA and subsection 21(2)(d) of the Regulation provided that the owner of a LIRA could apply to the financial institution that administers the LIRA to have the money paid out if the pension plan from which the money originated contained a provision allowing for the variation in payment of the pension due to the shortened life expectancy of that person. This option was not then available to owners of LIFs or LRIFs, but subsection 49(1) now applies to LIFs and LRIFs as well as LIRAs by virtue of sections 3 of Schedules 1 and 2 under the Regulation.

As of March 3, 2000, there are two ways in which an individual with shortened life expectancy may receive a variation of payment: pursuant to subsection 49(1) of the PBA (under the terms of the originating pension plan if the individual owns a LIRA, LIF or LRIF and the plan contains such provision) or pursuant to subsection 49(2) of the PBA (for owners of LIRAs, LIFs and LRIFs, regardless of whether the originating plan contains a shortened life expectancy provision).

If the originating plan contains a provision for shortened life expectancy, a LIRA, LIF or LRIF owner can apply for variation of payment under the terms of the plan to the financial institution holding the account. Whether the individual has a disability that is likely to Ashorten considerably his or her life expectancy" is essentially a medical question, and verification by a qualified medical practitioner should be submitted to the financial institution. On the basis of that

opinion and confirmation that the former pension plan does contain a shortened life expectancy provision, the financial institution should determine whether a variation in payment is appropriate in the circumstances (i.e., it meets the criteria for shortened life expectancy set out in the original plan). There is no prescribed form that must be used when an individual applies pursuant to subsection 49(1).

Regardless of whether the originating plan contains a shortened life expectancy provision, anyone who owns a LIRA, LIF or LRIF and suffers from shortened life expectancy can apply to the financial institution for variation of payment. All applications under subsection 49(2) must be made to the financial institution on a Superintendent-approved form (Form 5). Generally, the owner must provide the consent of his or her spouse, if any, and a statement from a physician licensed to practice medicine in a jurisdiction in Canada that, in the opinion of the physician, the owner has an illness or physical disability that is likely to shorten his or her life expectancy to less than two years. The owner may apply to withdraw some or all of the money in the account.

If the originating plan does contain a shortened life expectancy provision, the individual may apply under those terms or under the rules set out under subsection 49(2). (Detailed criteria for s. 49(2) shortened life expectancy are found in s. 51.1 of the Regulation.) In some cases, the plan may provide less strict terms (such as a life expectancy of five years) and it may be more advisable to apply under those terms.

2. Small Amounts

If an individual is at least 55 years old and the total value of all assets held in every Ontario LIRA, LIF and LRIF the individual owns is less than 40% of the Year's Maximum Pensionable Earnings (the "YMPE", which is a dollar figure set each year in relation to the Canada Pension Plan); for applications signed in 2002, the amount is 40% of $39,100 (the YMPE for 2002) ' $15,640, he or she may apply to the financial institution that administers the LIRA, LIF or LRIF to withdraw all of the money in the account - a partial withdrawal is not permitted. The Application must be made to the financial institution on a Superintendent-approved form (Form 5). The owner must provide the consent of his or her spouse unless they are living separate and apart at the time the application is signed.

The value of the assets held in each Ontario locked-in account must be based on the most recent statement provided by the financial institution, and the financial statement must not be dated more than 1 year before the date the application is signed.

3. Amounts that Exceed ITA Limits

The ITA imposes a limit on the amount that an individual may transfer from a registered pension plan to a locked-in account when a former member terminates employment or terminates membership in the plan and is entitled to a deferred pension. Amounts transferred pursuant to subsection 42(1) of the PBA that do not exceed the ITA limit may only be transferred to a LIRA, LIF or LRIF. Effective March 3, 2000, if the amount of the commuted value of an individual's deferred pension that is to be transferred to a locked-in account is greater than the amount allowed under the ITA for such a transfer, the administrator shall pay the excess amount to the individual in a lump sum. However, if an amount that exceeds the ITA limit has already been transferred to a locked-in account, section 22.2 of the Regulation allows the owner of the account to apply to the financial institution to withdraw the excess amount and any subsequent investment earnings, including any unrealized capital gains or losses that are attributable to the excess amount, or to transfer that amount to a non-locked-in RRSP or RRIF. It is up to the financial institution that administers the account to calculate this aggregate amount. The application must be made on a Superintendent-approved form (Form 5), and must include a written statement from either the plan administrator or the Canada Customs and Revenue Agency (CCRA, formerly Revenue Canada) that sets out the excess amount that was transferred into the locked-in account. It is not necessary for a spouse to consent to this withdrawal.

4. Financial Hardship

Effective May 1, 2000, individuals who qualify under certain prescribed circumstances of financial hardship may apply to the Superintendent of Financial Services for access to the money in their locked-in accounts. The rules and requirements for making such applications will be set out in a future policy.

Frequently Asked Questions About Locked-In Accounts

Do the locking-in rules expire when an individual reaches a certain age, such as 65?

Money in locked-in accounts is always subject to the rules of the PBA and Regulation, including the non-commutation (locking-in) rules, regardless of the individual's age.

Do the locking-in rules cease to apply when an individual leaves Canada?

Although some jurisdictions allow individuals who have left Canada to receive the money in their locked-in accounts in a lump sum, Ontario has no such provision. For individuals with Ontario locked-in accounts who leave Canada, their locked-in accounts continue to be governed by Ontario law, and they must receive payment in the same manner as if they were still in Canada (such as through a life annuity, LIF or LRIF).

Do the locking-in rules cease to apply if locked-in money is transferred to a financial institution outside Ontario?

Money in a locked-in account cannot be transferred to another financial institution, whether inside or outside Ontario, unless the money continues to be administered in accordance with the PBA and Regulation, including the locking-in requirements. Since Ontario law cannot be enforced outside Canada, locked-in money cannot be transferred to financial institutions outside Canada.

Is interest credited on the money in locked-in accounts also locked in?

The rule which prevents the withdrawal of money from locked-in arrangements applies to all money in the account (s. 21(2)(a) of the Regulation for LIRAs, s. 3(1) of the LIF Schedule 1 and s. 3(1) of the LRIF Schedule 2).

Where a contract provides that money is "locked-in" at a fixed interest rate for a certain period of time, do the pension locking-in provisions expire when the time period ends?

No; this confuses the pension locking-in rules with the period of time that the money is subject to a guaranteed rate of return and cannot be accessed without penalty. The pension locking-in rules apply as long as the contract is in effect.

Can locked-in money be borrowed against or be used as collateral to secure a loan?

This is specifically prohibited by sections 65 and 66 of the PBA.

Can locked-in accounts be combined with non-locked-in accounts?

The purpose of locked-in accounts is to hold monies that originated from registered pension plans (RPPs). Accordingly, the only monies that may be deposited in locked-in accounts are those which originated from a pension plan or another locked-in account. Individuals should not combine locked-in accounts with non-locked in accounts.

Can locked-in accounts hold an owner's personal mortgage?

Yes, provided that money in locked-in accounts are held as self-directed LIRAs, LIFs or LRIFs. This type of arrangement allows investment in a number of options not usually available under arrangements that are not self-directed. These options include Canada Savings Bonds, bonds, mutual funds, Treasury Bills, individual stocks, and home mortgages.

Ontario's pension law requires strict adherence to the PBA and Regulation in the administration of locked-in funds. Self-directed locked-in accounts that are designed to hold a personal mortgage must be administered at arms-length from the homeowner. The mortgage must be insured and set at rates generally available in the open market. If mortgage payments are in default, the administrator of the mortgage may foreclose. In such circumstances, the property can be sold and the outstanding loan amount paid back into the locked-in account.

Financial institutions administering locked-in self-directed accounts must observe both federal and provincial legislation. The CCRA regulates the investment options available, such as the percentage of assets which may be invested in foreign property. Ontario requires locked-in money to be administered according to the PBA and Regulation, and financial institutions which fail to administer locked-in money accordingly may be subject to prosecution.

Why is some pension money locked-in at termination of employment and some not? How do the pre-1987 vesting and locking-in provisions apply to former members who terminate employment after January 1, 1987?

As of January 1, 1988, both employer and employee contributions made after January 1, 1987 are vested and locked-in after two years of plan membership, and may only be used to provide a retirement income. However, benefits earned prior to 1987 (if not vested and locked-in earlier by plan provisions) only become locked-in when the member reaches age 45 and has 10 years of service. If not locked-in under these rules, employee contributions may be refunded on termination of employment.

The pre-1987 requirements for vesting and locking-in only apply to benefits that accrued prior to January 1, 1987. If the former member was a plan member for 10 years or has 10 years service and is at least 45 as of the date of termination of employment or membership, the pre-1987 benefits are vested and locked-in. However, if the 10-and-45 requirement is not met, the pre-1987 benefits are not vested and any contributions the individual made may be refunded to him or her, plus interest. As a result, it is possible to be vested and locked-in for some benefits and not for others.

How does the 2% of YMPE commutation apply to locked-in money?

Section 50 of the PBA provides that the terms of a pension plan may permit the payment of the commuted value of an annual pension payable at normal retirement date as a lump sum amount if that pension is less than 2% of the YMPE in the year of the plan member's termination. This option must be exercised under the pension plan; it does not apply to money in locked-in accounts or to life annuities purchased with money transferred from a locked-in account. Section 50 is limited to the terms of a pension plan and there is no authority under the PBA or Regulation to permit a financial institution to apply such a provision to a locked-in account or annuity.

What is the liability of the plan administrator once money is transferred to a locked-in account?

Subsection 42(11) of the PBA discharges a plan administrator from any further responsibility for administering the pension or deferred pension entitlement of an individual when locked-in money is transferred to a financial institution. Financial institutions that receive locked-in money assume responsibility for administering the locked-in accounts in accordance with the relevant provisions of the PBA and Regulation.