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: The Locked-In Retirement Account

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 (referred to in this policy as a "locked-in account").

This policy will provide an overview of the main features and requirements of one such locked-in account, the Locked-in Retirement Account ("LIRA"). For greater details regarding the rules which apply to all types of locked-in accounts, please refer to policy L200-100.

Effective June 24, 1994, Regulation 909, R.R.O. 1990 under the PBA ("Regulation") was amended to introduce the LIRA. The LIRA must satisfy the requirements of two statutes. To ensure that money in the LIRA is allowed to accrue on a tax-deferred basis, each LIRA must be established as a Registered Retirement Savings Plan ("RRSP") in accordance with the *Income Tax Act* (Canada) ("ITA"). In addition, to ensure that the money in the LIRA is preserved for retirement and provides a lifetime stream of income, each LIRA must comply with the "locking-in" requirements set out in the PBA and Regulation. Prior to the introduction of the LIRA, the pension industry referred to this type of locked-in account as a locked-in Registered Retirement Savings Plan (a "locked-in RRSP").

The Contractual Requirements of the Ontario LIRA

Some Canadian jurisdictions require that specimen LIRA contracts be approved by their pension regulatory authority and maintain a list of financial institutions whose LIRA contracts have been approved. Ontario does not require that specimen contracts be submitted for approval and does not maintain such a list. Any financial institution may issue an Ontario LIRA as long as it complies with the requirements of the PBA and the ITA.

The key feature of LIRAs that distinguishes them from regular (non-locked-in) RRSPs is that no money may be withdrawn from LIRAs except in circumstances prescribed by Regulation: subsection 21(2)(a) of the Regulation states that a contract to establish a LIRA shall provide that money in the account will not be withdrawn in whole or in part, except in the situations described below.

<u>Transfers from a LIRA</u>

Money in a LIRA, including any accrued interest and any other investment earnings, may only be transferred:

- to the pension fund of a subsequent employer's registered pension plan, if that plan is willing to accept the transfer and administer it in accordance with the PBA and Regulation;
- to another LIRA;
- to a Canadian insurance company for the purchase of an immediate or deferred life annuity;
- to a Life Income Fund ("LIF") or Locked-In Retirement Income Fund ("LRIF"); or
- for payment under the terms of the PBA and Regulation in situations of shortened life expectancy, specified LIRA amounts at age 55 or over, excess amounts held in the LIRA under the ITA, or in prescribed circumstances of financial hardship.

The Regulation requires that the LIRA contract provide that:

- the money in the LIRA will not be assigned, charged, anticipated or given as security (except pursuant to a court order or domestic agreement under the *Family Law Act*), and any transaction which does so is void;
- the money in the LIRA cannot be commuted, withdrawn or surrendered, in whole or in part (except as permitted under the PBA and Regulation), and any transaction that does so is void; and,
- if money in the account is subsequently transferred, the transferee must agree to administer it as a pension or deferred pension (i.e., the money must remain locked-in) in accordance with the PBA and Regulation.

<u>Payment of a Death Benefit</u>

The LIRA contract must provide that on the death of the owner, the financial institution which holds the LIRA will administer the money in accordance with section 48 of the PBA. This means that the owner's spouse is entitled to receive a pension or a lump sum payment equal to the value of the LIRA on the date of death. However, this legislated entitlement does not apply if the spouse had previously waived his or her entitlement to the death benefit, or if the owner and the spouse were living separate and apart at the time of the owner's death. The intent is not to deny a spouse who is living separate and apart <u>any</u> entitlement to a survivor benefit; a waiver simply revokes the <u>legislated entitlement</u> to the survivor benefit but does not prevent the owner from designating the spouse as a beneficiary. [Note: The use of the term 'spouse' in this policy has the same meaning as 'spouse' as defined in the PBA, which includes a common-law spouse.]

Where there is no spouse, where there has been a waiver of entitlement, or where the spouse is living separate and apart at the time of the owner's death, the death benefit would be paid to the owner's designated beneficiary or, if there is no beneficiary, to the owner's estate. The death benefit must be paid as an unlocked lump sum.

Assignment of Money in a LIRA on the Breakdown of a Marriage or Permanent Relationship

The LIRA contract must provide that money in a LIRA cannot be assigned, charged, anticipated or given as security except as permitted by subsection 65(3) of the PBA. On breakdown of the marriage or permanent relationship (breakdown), this exception permits the assignment, by an order under the *Family Law Act* or pursuant to a domestic contract as defined by Part IV of that Act, of an interest in the amount in a LIRA. Subsection 51(2) of the PBA provides that no more than 50% of the amount in the LIRA may be assigned to a former spouse on breakdown.

Any portion of a LIRA that is assigned as a result of a court order on breakdown must continue to be administered as a pension or deferred pension. This means that the former spouse's share must be transferred to a locked-in account (LIRA, LIF or LRIF) or used to purchase a life annuity.

Money in a LIRA can be divided between the owner and the former spouse but payments to the former spouse cannot commence until the earlier of the date on which the LIRA owner (the former member) begins to receive payments from his or her locked-in account or life annuity or when the former member reaches his or her normal retirement date (usually at 65). That is, the action or age of the former member determines when the former spouse of the former member can begin to receive payment from his or her LIRA.

No Differentiation on the Basis of Sex

Subsection 21(4) of the Regulation requires that the contract for the LIRA contain a statement as to whether the initial amount transferred to the LIRA was determined in a manner that differentiated on the basis of sex. This information is required because if an annuity is eventually purchased using the money in the LIRA, the annuity cannot differentiate on the basis of the sex of the LIRA owner unless the initial transfer amount was determined on a sex distinct basis. Locked-in money that represents the value of the pension earned on or after January 1, 1987 must be determined on a basis that does not differentiate on the basis of sex.

Applications for Withdrawal of Money from a LIRA for Shortened Life Expectancy

Before March 3, 2000, LIRA owners whose life expectancy was shortened considerably by reason of mental or physical disability were allowed to receive money from their LIRA in cash only if the pension plan from which the money originated contained a provision allowing for the variation of payment due to the shortened life expectancy of that person. If the plan contained such a provision, the LIRA was deemed to include the provision. This exception to the locking-in rules still applies, and if available, the LIRA owner is responsible for satisfying the financial institution administering the LIRA that his or her former plan contained such a provision and that, based on medical evidence, the owner's life expectancy has been considerably shortened. 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).

As of March 3, 2000, the Regulation was amended to provide for shortened life expectancy withdrawals for all LIRA owners (and owners of LIFs and LRIFs), regardless of whether or not their former pension plans contained shortened life expectancy provisions. Any LIRA owner may now apply to the financial institution to withdraw some or all of the money in the account if he or she is suffering from an illness or physical disability that is likely to shorten his or her life expectancy to less than two years. The application must be made on a form approved by the Superintendent of Financial Services (Form 5), signed by the owner of the LIRA, and accompanied by the following documents:

- Physician's statement

A statement signed by a physician, who is licensed to practice medicine in Canada, that in his or her opinion, the owner has an illness or physical disability that is likely to shorten his or her life expectancy to less than two years. The physician may either fill in Part 5 of Form 5, or provide his or her opinion as to the owner's life expectancy in another written and signed format, such as a letter. If the physician does not fill in Part 5, the letter must include a statement that the physician is licensed to practice medicine in a jurisdiction in Canada.

- Consent of spouse

If the LIRA owner has a spouse as of the date the application is signed, the spouse must consent to the application before the money can be withdrawn. **The spouse is not obligated to consent to the application**. If the spouse agrees to consent, he or she must complete Part 4 of Form 5 in the presence of a witness (a person other than the LIRA owner).

Consent of a spouse is <u>not</u> required if the LIRA owner and spouse are living separate and apart, or if the money in the LIRA resulted from the pension benefit of someone other than the LIRA owner, such as the owner's former spouse as a result of a breakdown between spouses.

The completed application must be submitted to the financial institution which administers the LIRA within 60 days after the date on which it was signed by the owner and the spouse, if applicable. Whether the application meets the requirements for withdrawal, including the adequacy of the physician's statement is determined by the financial institution. If the applicant qualifies for the withdrawal, the financial institution must pay the money within 30 days after it receives the completed application.

If the pension plan from which the money in the LIRA originated contained a variation of payment provision for shortened life expectancy, the LIRA owner has the choice of applying under the terms of the Regulation (and should use Form 5) **or** applying under the terms of the plan provisions and the LIRA contract (in which case, Form 5 does not apply). An example of a situation where the individual may wish to apply under the pension plan provisions would be where the plan provided a more generous shortened life expectancy criteria (e.g., less than five years).

LIRA owners can only apply for the shortened life expectancy withdrawal under the rules described above if their LIRA is governed by the laws of Ontario. If the LIRA is governed by the laws of another province or the federal government, the shortened life expectancy relief described above is not applicable. If the owner is not sure, he or she should contact the administrator of the plan from which the pension originated or the financial institution administering the LIRA.

Applications for Withdrawal of Money from a LIRA of a Specified Amount at Age 55 or Over ("Small Amounts")

The locking-in rules present a problem when the amount in a LIRA is not sufficient to qualify for the purchase of a life annuity or when the amount is too small to purchase a LIF or LRIF. The problem is compounded when the owner reaches age 69, at which time the LIRA has to be de-registered under the ITA. The money then has to be transferred to a non-tax sheltered retirement vehicle but the locking-in provisions continue to apply.

Effective March 3, 2000, the owner of a LIRA may apply to withdraw <u>all</u> of the money in the LIRA if:

- the owner is at least 55 years old when he or she applies; and
- the value of all assets held in <u>all of the owner's Ontario LIRAs, LIFs and LRIFs</u> is less than 40% of the Year's Maximum Pensionable Earnings (YMPE) for the calendar year in which the application is made. (For the year 2002, this amount is 40% of $39,100 (the YMPE for 2002) = $15,640.)

The value of the assets held in each Ontario LIRA, LIF and LRIF must be based on the most recent statement given to the owner by the financial institution, and the statement must not be dated more than one year before the date the application is signed.

The application must be made on a form approved by the Superintendent of Financial Services (Form 5) and signed by the owner of the LIRA. If the LIRA owner has a spouse as of the date the application is signed, the spouse must consent to the application before the money can be withdrawn. **The spouse is not obligated to consent to the application**. If the spouse agrees to consent, he or she must complete Part 4 of Form 5 in the presence of a witness (someone other than the LIRA owner).

Consent of a spouse is not required if the LIRA owner and spouse are living separate and apart, or if the money in the LIRA resulted from the pension benefit of someone other than the LIRA owner, such as the owner's former spouse as a result of a breakdown between spouses.

The completed application must be submitted to the financial institution which administers the LIRA within 60 days after the date on which it was signed by the owner and the spouse, if applicable. Whether the application meets the requirements for withdrawal is determined by the financial institution. If the applicant qualifies for the withdrawal, the financial institution must pay the money within 30 days after it receives the completed application.

LIRA owners can only apply for the small amount withdrawal under the rules described above if their LIRA is governed by the laws of Ontario. If the LIRA is governed by the laws of another province or the federal government, these rules do not apply. If the owner is not sure, he or she should contact the administrator of the plan from which the pension originated or the financial institution administering the LIRA.

Applications for Withdrawal of Money from a LIRA for Amounts that Exceed ITA Limits

The ITA imposes a limit on the amount that a former member may transfer from a registered pension plan to a locked-in account on a tax-deferred basis when a former member terminates employment or terminates membership in the plan. Amounts transferred that do not exceed the ITA limit can only be transferred to a locked-in account. 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 must 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 LIRA, the owner may apply to the financial institution to withdraw in cash 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 vehicle. It is up to the financial institution that administers the account to calculate the aggregate amount to be withdrawn.

The application must be made on a form approved by the Superintendent (Form 5) and must include a written statement from either the administrator of the owner's former pension plan or the Canadian Customs and Revenue Agency ("CCRA") that sets out the excess amount that was transferred into the LIRA. The consent of a spouse is not necessary.

The completed application must be submitted to the financial institution which administers the LIRA within 60 days after the date on which it was signed by the owner. The financial institution is required to make payment to the owner within 30 days after receipt of the completed form and accompanying document.

Frequently-Asked Questions about LIRAs

What is the earliest age on which payments from a life annuity purchased from a LIRA can begin?

If the LIRA owner chooses to purchase a life annuity, he or she is not required to wait until age 65 to begin to receive payments. The first income payment under the annuity must not begin before the earlier of the earliest date on which the former member is entitled to receive pension benefits under the PBA (normally age 55) or the earliest date on which the former member is entitled to receive pension benefits under any pension plan from which the money was transferred.

If money in a LIRA is used to purchase a LIF or LRIF, what are the earliest and latest dates that money can be transferred?

The earliest age that an individual can purchase a LIF or LRIF is generally 55 but could be earlier depending upon the age at which members may receive a benefit under the terms of the pension plan from which the money originated. Payments from a LIF or a LRIF must begin no later than the end of the second fiscal year of the LIF or LRIF. Accordingly, the money in the LIRA can be transferred to the LIF or LRIF at age 54 or earlier if the plan so provides.

Can funds in an Ontario LIRA be transferred to a RRIF?

No. The proceeds from an Ontario LIRA must be used to provide either a life annuity, a LIF or a LRIF so that the owner will receive regular payments when his or her earnings have stopped. Since one can outlive a RRIF, transferring the money in a LIRA to a RRIF would not achieve this objective.

Can money in an Ontario LIRA be transferred or combined with locked-in money from another jurisdiction?

Because some of Ontario's statutory requirements differ from those of other Canadian pension jurisdictions, the contract for an Ontario LIRA will likely differ from the contract for a LIRA of another jurisdiction. Consequently, locked-in money that is required to be administered in accordance with the Ontario PBA may not be transferred to or combined with a locked-in account of another pension jurisdiction.

Does the holding of an investment which is not redeemable before maturity restrict the date on which the owner of a LIRA may purchase a life annuity, LIF or LRIF with the money in the LIRA?

Owners of LIRAs may purchase an annuity, LIF or LRIF before the expiry of the term of an investment at the discretion of the financial institution. Owners making investment decisions should be mindful that CCRA requires all RRSPs, including LIRAs, to be de-registered before age 69.

Can money in a LIRA be released to fund the purchase of a home under the federal government's Home Buyers' Plan, introduced in 1992?

No. In Ontario, monies in LIRAs cannot be loaned to buy a house to take advantage of the federal Home Buyers' Plan.