



SECTION:	Investment Guidance Notes
INDEX NO.:	IGN-001
TITLE:	Buy-In Annuities for Defined Benefit Plans
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO website (February 2015)
EFFECTIVE DATE:	February 2015

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

*Note: The electronic version of this guidance note, including direct access to all linked references, is available on FSCO's website at www.fSCO.gov.on.ca. All pension policies and guidance notes can be accessed from the **Pensions** section of the website through the **Pension Policies** link.*

This guidance note sets out FSCO's expectations of an administrator of a defined benefit pension plan (administrator) with respect to the investment of pension plan funds in buy-in annuities which constitute an investment held in an unallocated general fund of a person authorized to carry on a life insurance business in Canada in respect of all or part of the pension entitlements associated with a specific group of members, former members or retired members (covered members).

The purchase of a buy-in annuity is considered an investment of the pension plan. All decisions made with respect to buy-in annuities must be made by the administrator in accordance with its standard of care and its fiduciary obligation to invest the plan fund's assets in the best interests of the plan's beneficiaries.

1.0 Structure of the Investment

Buy-in annuities are similar to "buy-out" annuities; however, instead of issuing individual certificates to covered members and paying pensions to them individually, the insurer makes periodic payments to the pension plan fund equal to the aggregate pension amount covered by the policy.

The buy-in annuity is an investment of the pension fund and covered members have no greater claim to such payments than to any other specific assets of the pension fund. The responsibility for administering benefits remains with the administrator.

It is not necessary that a buy-in annuity cover every member of the plan, every member of a certain class of plan members or the entire benefit of every covered member. For example, a buy-in annuity might exclude certain groups of retired members, active members as a class, or the indexing component of the pension benefit.

If assets of the plan fund are invested in a buy-in annuity, the administrator nonetheless remains responsible for ensuring that all benefits covered by the buy-in annuity are paid from the plan fund, regardless of whether the insurer makes the required annuity payments.

1.1 Application of Section 43 of PBA

Buy-in annuities are not subject to section 43 of the PBA and administrators do not require the approval of the Superintendent of Financial Services to purchase buy-in annuities; however, if the buy-in annuity were converted to a buy-out annuity, in full or in part, while the plan was ongoing, section 43 of the PBA would apply and the conversion would have to comply with the PBA and Regulation, including the requirement to obtain the approval of the Superintendent of Financial Services, where applicable.¹

2.0 Prudent Investing and Due Diligence

2.1 Authority to Invest

An administrator may only invest plan funds in a buy-in annuity if the investment is permitted under the terms of the pension plan, the statement of investment policies and procedures and all applicable statutory requirements (including the prudent person rule in section 22 of the PBA and the Federal Investment Regulations (FIR), as defined in section 66(1) of the Regulation).² The plan's statement of investment policies and procedures should explicitly permit investment in buy-in annuities at the time any such investment is made.

2.2 Pricing and Transaction Costs

The administrator should conduct appropriate due diligence when negotiating the pricing of buy-in annuities and should not rely solely on the pricing provided by a particular insurer. One method for determining fair pricing is to hold a competitive bidding process with multiple insurers submitting prices; however, at minimum, appropriate due diligence with respect to pricing and transaction costs will include soliciting quotes from different insurers.

¹ In addition, section 43 of the PBA only permits the purchase of buy-out annuities from a corporation authorized to undertake life insurance in Canada.

² The FIR are defined in section 66 of the Regulation as sections 6, 7, 7.1 and 7.2 and Schedule III to the "Pension Benefits Standards Regulations, 1985" made under the Pension Benefits Standards Act, 1985 (Canada), as they may be amended from time to time.

Administrators should consider the pricing of buy-in annuities compared to other similar investment options. Given the specialized nature of these products, it would be appropriate in most cases to retain independent expert advice.

It is the responsibility of the administrator to consider the costs involved with any investment in buy-in annuities and to ensure that those costs are incurred prudently and in the best interests of the plan members. Such costs may include legal, actuarial, and consulting fees.

2.3 Counterparty Risk and Coverage

The administrator should consider the security of the investment including the counterparty risk (i.e., the risk that the insurer will not fulfil the terms of the buy-in annuity contract). The administrator should consider the overall financial health of the insurer, which may involve assessing factors such as the insurer's corporate governance practices, credit ratings and any applicable regulatory requirements including capital or solvency requirements.

The administrator should determine the extent of coverage available to the plan (e.g. through Assuris) in respect of the buy-in annuity in the event that the insurer becomes insolvent, and consider whether the coverage provides adequate protection for the plan fund. The administrator should consider what terms may need to be included in the buy-in annuity contract relating to any future change in coverage that may occur.

The administrator should consider whether it is reasonable and appropriate in the circumstances to diversify the investment by entering into separate buy-in annuity contracts with multiple insurers.

2.4 Contract Terms

It is the responsibility of the administrator to ensure that the terms of any buy-in annuity contract are clear and permit the administrator in all circumstances to administer benefits in accordance with the plan terms and fully comply with all applicable statutory requirements, as they may change from time to time. In particular, administrators should consider contractual terms related to portability options, early retirement provisions, pre-retirement death benefits, optional forms of payment, and pension division or lump sum transfer on breakdown of a spousal relationship. The administrator should also carefully consider the ability to modify or terminate the buy-in annuity contract.³

An investment in a buy-in annuity must not result in members being treated inequitably on wind up of the pension plan. In other words, the terms of the buy-in annuity contract must not purport to provide covered members with greater benefit security than other beneficiaries of the plan. It is the responsibility of the administrator to ensure that the terms of the buy-in annuity contract permit liquidation, or partial liquidation, at the option of the administrator, in the event that the plan is wound up and there is a funding shortfall.

³ As with all contracts, the administrator should consider the legal ability of the counterparty to enter into the buy-in annuity contract and the enforceability of the contract (including the cost and difficulty of enforcement).

3.0 Plan Wind Up

The buy-in annuity contract should clearly specify the administrator's rights on a plan wind up to terminate the contract and the method to be used to determine the settlement value on termination, as well as any other options available to the administrator in respect of the buy-in annuity on wind up of the plan.

If a plan is wound up and there is no funding shortfall, the buy-in annuity may convert to buy-out annuities, in accordance with the approved wind up report, and the insurer may issue individual certificates to covered members and begin paying pensions to retired members directly. Members and former members may receive deferred annuities.⁴

If a plan is wound up and the benefits payable to covered members are subject to a reduction in accordance with the approved wind up report, the buy-in annuity may convert to buy-out annuities paying reduced amounts to the individual covered members.⁵ The difference between the full value of the buy-in annuity and the aggregate value of the reduced buy-out annuities would be made available to the plan as a refund to the plan or a credit towards the purchase of additional buy-out annuities, in accordance with the approved wind up report.

4.0 Actuarial Funding Valuation Reports

An acceptable method of valuing a buy-in annuity to be included in the assets of an actuarial funding valuation report would be to set the asset value equal to the value of the pension benefits covered by the buy-in annuity (if the buy-in annuity provides an exact hedge to the covered pension benefits), calculated on both a going concern and solvency basis. This could result in the asset value of the buy-in annuity being different under the going concern and solvency valuations.

If the buy-in annuity does not exactly hedge the covered pension benefits, then the asset value of the buy-in annuity should be adjusted to reflect any differences. For example, in performing a solvency valuation, if the contract provides for a value available to the plan on wind up that is different from the liabilities calculated on a wind up basis in accordance with the PBA and Regulation (e.g. due to fees or expenses applied, portability options not provided, early retirement options not provided, etc.), then it would not be appropriate to set the asset value of the buy-in annuity equal to the wind up liabilities of the related pension benefits. The buy-in annuity could expose the plan to an additional funding shortfall due to the difference between the contracted value of the buy-in annuity and the wind up liabilities of the covered pension benefits. In this situation, FSCO would expect the actuary to calculate this shortfall in each actuarial funding valuation report and determine its effect on the required funding for the plan. This may result in additional funding requirements for the sponsor in respect of the liabilities covered by the buy-in annuity.

⁴ Any conversion to individual buy-out annuities is subject to a member's exercise of portability rights under section 73. The administrator's decision to convert to buy-out annuities or to exercise another option must be made in accordance with the administrator's fiduciary duties. Therefore, the administrator must conduct appropriate due diligence at this time including with respect to counterparty risk, Assuris or similar coverage and pricing of annuities.

⁵ See footnote 4.

For clarity, the value of the buy-in annuity should be included in the determination of the going concern assets and liabilities and of the solvency assets and liabilities of the plan. Accordingly, the value of the buy-in annuity should be included for purposes of determining the transfer ratio and the maximum amount of a letter of credit, where applicable. If the going concern or solvency valuation uses an asset smoothing method, the value of the buy-in annuity should be excluded from the asset smoothing calculation.

FSCO will consider, on a case by case basis, submissions from the plan actuary in support of the use of a valuation method that is different from the one described in this guidance note.

5.0 Financial Statements

For the purpose of filing financial statements for the pension fund or plan, measurement and disclosure of the buy-in annuity should comply with section 76 of the Regulation, generally accepted accounting principles and the disclosure expectations set out in FSCO Guidance Note FSGN-100 (Disclosure Expectations for Financial Statements Filed Pursuant to Regulation 909 s. 76).

The valuation techniques used in the fair value measurement of a buy-in annuity must comply with generally accepted accounting principles. Since the payments from a buy-in annuity are directly linked to the payments in respect of the covered pension benefits, FSCO would accept a value that is equal to the actuarial present value of the covered pension benefits, adjusted to the extent that it does not provide for an exact hedge. The valuation techniques and inputs used to develop fair value measurement should be fully disclosed in the financial statements.

6.0 Pension Benefits Guarantee Fund

Because a buy-in annuity is an investment of the plan fund and does not affect the liabilities of the plan, every Ontario covered member of a buy-in annuity must be included in the calculation of the plan's Pension Benefits Guarantee Fund assessment base for those plans to which section 37 of the Regulation applies.

7.0 Foreign Buy-in Annuity Transactions

Under certain circumstances, an administrator may determine that it is prudent (and in accordance with all applicable laws including, but not limited to, insurance law) to invest plan funds in a foreign buy-in annuity (i.e., a buy-in annuity that is purchased from a person that is not authorized to carry on a life insurance business in Canada). Prior to purchasing a foreign buy-in annuity, an administrator should conduct additional due diligence and consider other factors, such as:

- a consideration of the regulatory regime to which the foreign buy-in annuity and the issuing insurer are subject;
- any capital or solvency requirements applicable to the insurer;
- any coverage or guarantee fund available in the case of insurer insolvency;
- the legal ability of the insurer to enter into the contract;

- the enforceability of the buy-in annuity contract in any foreign jurisdiction whose laws apply to the contract (and the cost and difficulty of enforcement);
- the exchange rate risk if the payments under the buy-in annuity contract will be made in a currency other than Canadian dollars; and,
- differences in the application of the PBA and Regulation, and the FIR to a foreign buy-in annuity.

Foreign buy-in annuity transactions are not exempt from the application of section 9 in Schedule III of the FIR (the 10 per cent rule).