



May 24, 2017

Via email: [FIN.Pensions-Pensions.FIN@canada.ca](mailto:FIN.Pensions-Pensions.FIN@canada.ca)

Lisa Pezzack  
Director  
Financial Systems Division  
Department of Finance Canada  
90 Elgin Street, 13th Floor  
Ottawa, ON K1A 0G5

Dear Ms. Pezzack:

**Re: Proposed Regulatory Changes to the Pension Benefits Standards Regulations, 1985 and the Pooled Registered Pension Plans Regulations**

The Pensions and Benefits Law Section of the Canadian Bar Association (CBA Section) is pleased to provide comments on the proposed changes to the *Pension Benefits Standards Regulations, 1985* (the “*PBSR*”) and the *Pooled Registered Pension Plan Regulations* (the “*PRPPR*”) published in the *Canada Gazette*, Part I on April 29, 2017.

The CBA is a national association representing over 36,000 jurists, including lawyers, notaries, law teachers and students across Canada. We promote the rule of law, access to justice, effective law reform and provide expertise on how the law touches the lives of Canadians every day. The CBA Section contributes to national policy, reviews developing pensions and benefits legislation and promotes harmonization.

The CBA Section commends the government’s continuing efforts to address important pension plan funding issues and to make technical changes to pension legislation where required. We also appreciate the government seeking input from pension industry stakeholders on proposed legislative changes.

**Letters of Credit**

We note that the proposed amendments to the *PBSR* would change the letter of credit limit from 15% of a plan’s assets to 15% of a plan’s solvency liabilities. This change would result in the letter of credit limit under the *PBSR* being the same or similar to the limit under pension legislation in several provinces, including Ontario and Nova Scotia. As we have long advocated harmonization of pension legislation across Canada, we believe that these proposed changes are a positive step.

## Technical Amendments

### a) Transfers to Provincially-Regulated Plans, Excepted Plans and PRPPs

The draft amendments to *PBSR* sections 20(1)(a)(ii) (for locked-in RRSPs) and 20.2(1)(a)(ii) (for restricted locked-in savings plans) provide that funds in these plans may be transferred to provincially-regulated pension plans, “excepted plans” and pooled registered pension plans by the holder of the plan. However, no changes have been proposed to sections 20(1)(b)(ii) or 20.2(1)(b)(ii) which govern a survivor’s right to transfer the funds on the death of the holder.

For consistency, the CBA Section suggests amending sections 20(1)(b)(ii) and 20.2(1)(b)(ii) as follows (changes are underlined):

(ii) transferring the funds to a plan, including any pension plan referred to in subsection 26(5) of the Act, if the plan permits such a transfer and if the plan administers the benefit attributed to the transferred funds as if the benefit were that of a plan member with two years membership in the plan, [...]

Also for consistency, we suggest the same change should be made to section 21(2)(b)(ii) (transfers to plans) with respect to deferred life annuities:

(ii) transferred to a plan, including any pension plan referred to in subsection 26(5) of the Act, if the plan permits such a transfer and administers the benefit attributed to the transferred funds as if the benefit were that of a plan member with two years of membership in the plan, [...]

### b) Amendments to Correct Inconsistencies between French and English Versions

We also take this opportunity to note at least one inconsistency between the French and English versions of the *Pension Benefits Standards Act, 1985* (the “*PBSA*”) which should be corrected. The definitions of “pension plan” in section 4(2) of the *PBSA* are different in the French and English versions. The inconsistent wording is underlined below:

#### English Version:

(2) In this Act, ***pension plan*** means a superannuation or other plan organized and administered to provide pension benefits to employees employed in included employment (and former employees) and to which the employer is required under or in accordance with the plan to contribute, whether or not provision is also made for other benefits or for benefits to other persons, and includes a supplemental pension plan, whether or not the employer is required to make contributions under or in accordance with the supplemental pension plan, but does not include [...]

#### French Version:

(2) Pour l’application de la présente loi, ***régime de pension*** s’entend d’un régime de retraite ou autre institué et géré en vue d’assurer des prestations de pension aux salariés occupant un emploi inclus ainsi qu’aux anciens salariés, que le régime prévoit ou non d’autres prestations ou le paiement de prestations à d’autres personnes, et au titre duquel et conformément auquel l’employeur est tenu d’y verser des cotisations; est assimilé à un régime de pension tout régime complémentaire, au titre duquel ou conformément auquel l’employeur est tenu d’y verser des cotisations, mais non: [...]

While it is not entirely clear, we assume that the intention of this definition is for a supplementary pension plan to only be considered a “pension plan” for purposes of the *PBSA* where the employer is required to contribute to the plan. This interpretation is consistent with the French version but not the English version of section 4(2).

### **Conclusion**

The CBA Section appreciates the federal government’s continuing efforts to address important pension plan funding issues and improve pension legislation. We trust that our comments are helpful and look forward to the opportunity for continued participation in the federal government’s pension consultations.

Yours truly,

*(original letter signed by Marc-André O’Rourke for Tina Hobday)*

Tina Hobday  
Chair, CBA Pensions and Benefits Law Section

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