

**DIRECTIVE NO. 4**

Issued, effective March 1, 2021, pursuant to Section 40 of the *Pension Benefits Act, 1997*

DATED at St. John's, Newfoundland and Labrador the 26<sup>th</sup> day of January, 2021



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Superintendent of Pensions

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**Locked-In Retirement Account Requirements**

1. In this Directive:
  - (a) “Act” means the Newfoundland and Labrador *Pension Benefits Act, 1997*;
  - (b) “financial institution” means the savings institution or insurance company providing a LIRA;
  - (c) “fiscal year” means a fiscal year of the LIRA;
  - (d) “Income Tax Act” means the *Income Tax Act* (Canada);
  - (e) “LIRA” means a registered retirement savings plan established in accordance with the Income Tax Act that is locked-in in accordance with the Regulations and meets the conditions set out in this Directive, known as a Locked-In Retirement Account;
  - (f) “life annuity contract” means an arrangement made to purchase, through a person authorized under the laws of Canada or a province to sell annuities as defined in the Income Tax Act, a non-commutable pension, in accordance with Directive No. 6, that will not commence before that person attains the age of 55 years, or if that person provides evidence to the satisfaction of the financial institution that the plan or any of the plans from which the money was transferred provided for payment of the pension at an earlier age, that earlier age;
  - (g) “list” means the appropriate list of retirement savings arrangements established and maintained under section 18 of the Regulations;
  - (h) “owner” means the member or former member of a pension plan who has made a transfer pursuant to section 40 of the Act to a LIRA and, unless otherwise stated, includes the principal beneficiary or former principal beneficiary of the member

or former member if the principal beneficiary or former principal beneficiary is entitled to a pension benefit as a result of the death of the member or former member or as a result of marriage breakdown;

- (i) “principal beneficiary” means the spouse of a member or former member, or where the member or former member has a cohabiting partner, the member or former member’s cohabiting partner, as defined in the Act;
  - (j) “Regulations” means the *Pension Benefits Act Regulations* under the Act;
  - (k) “YMPE” means the Year’s Maximum Pensionable Earnings under the Canada Pension Plan for a specified calendar year.
2. A financial institution must file with the Superintendent a specimen certified copy of a LIRA and any amendments for review and approval.
  3. The Superintendent will maintain a list of financial institutions approved by the Superintendent as offering acceptable LIRA products.
  4. The conditions on which a transfer of locked-in money to a LIRA under section 40 of the Act and any subsequent transfer to a financial institution of money so transferred are to be made as set out in this Directive.
  5. A LIRA may be purchased with respect to an entitlement to a pension under a pension plan by:
    - (a) a member or former member of a pension plan; or
    - (b) the principal beneficiary or former principal beneficiary of a member or former member if the principal beneficiary or former principal beneficiary is entitled to a pension benefit as a result of the death of the member or former member or as a result of marriage breakdown.
  6. An administrator of a pension plan or a financial institution providing a LIRA, Life Income Fund, or Locked-in Retirement Income Fund shall not affect a transfer to a LIRA provided by a financial institution unless the transferor has:
    - (a) ascertained that the transferee financial institution’s name and LIRA are currently on the list of approved retirement savings arrangements; and
    - (b) advised the transferee financial institution in writing that, subject to Part VI of the Act, no withdrawal, commutation, or surrender of money is permitted except as otherwise provided for under this Directive.
  7. The transferee financial institution under section 6 shall not permit any subsequent transfer except where:
    - (a) a transfer would be permitted under the Act; and

- (b) the subsequent transferee agrees to administer the amount transferred as a pension benefit in accordance with the Act.
8. The transferee shall advise in writing any subsequent transferee that the amount transferred must be administered as a pension benefit under the Act.

### **Establishing the LIRA**

9. A contract establishing a LIRA shall incorporate the applicable definitions set out in the Act, Regulations, and section 1 of this Directive, as necessary, and shall include the following provisions:
- (a) the name and address of the financial institution providing the LIRA;
  - (b) a description of the owner's power, respecting investment of the assets in the LIRA;
  - (c) a statement that the owner agrees not to assign, charge, anticipate, or give as security money under a LIRA except as permitted under the Act;
  - (d) all contracts are subject, with any necessary modifications, to the division of pension benefits on marriage breakdown provisions in Part VI of the Act;
  - (e) a description of the method for determining the value of the LIRA. This valuation method must be the one that is to be used to establish the LIRA's value upon the death of an owner, upon the establishment of a life annuity contract or upon a transfer of assets from the LIRA;
  - (f) the fiscal year of the LIRA must end on the 31<sup>st</sup> day of December and must not exceed twelve months;
  - (g) the pension benefit payable to a former member who has a principal beneficiary at the date the pension commences shall be a joint and survivor pension benefit with at least 60% continuing to be payable to the survivor for life after the death of the former member unless the principal beneficiary waives the entitlement in the form and manner required by the Superintendent; and
  - (h) if money is paid out contrary to the Act or this Directive, the financial institution will provide or ensure the provision of a pension benefit equal in value to the pension benefit that would have been provided had the money not been paid out.

### **Transferring Assets from the LIRA**

10. Except as otherwise permitted in this Directive, all money transferred, including all investment earnings, shall be used to provide a pension benefit and shall not be transferred except:
- (a) before December 31<sup>st</sup> in the year in which the owner reaches the age at which a pension benefit is required to begin under the Income Tax Act, to transfer the

money to the pension fund of a registered pension plan subject to the Act or to a registered pension plan subject to the pension benefits legislation of a designated province, as defined in the Act, or of Canada;

- (b) before December 31<sup>st</sup> in the year in which the owner reaches the age at which a pension benefit is required to begin under the Income Tax Act, to transfer the money to another LIRA that meets the requirements of this Directive;
- (c) to purchase a life annuity contract that meets the requirements of the Superintendent, commencing not before the owner obtains the earlier of:
  - (i) age of 55 years; or
  - (ii) the earliest date on which the owner would have been entitled to receive a pension benefit under the pension plan from which the money was transferred to the LIRA;
- (d) to transfer the money to a Life Income Fund that meets the requirements of Directive No. 5; or
- (e) to transfer the money to a Locked-in Retirement Income Fund that meets the requirements of Directive No. 17.

#### **Withdrawals from the LIRA**

- 11. Notwithstanding section 10, the contract may provide for the withdrawal of money as a lump sum or series of payments if a medical practitioner certifies that due to mental or physical disability the life expectancy of the owner is likely to be shortened considerably, but where the owner is a former member of a pension plan such payment may only be made if the principal beneficiary of the former member has waived the joint and survivor pension entitlement in the form and manner required by the Superintendent.
- 12. Notwithstanding section 10, the contract shall provide for a lump sum payment equal to the value of the entire contract on application by the owner to the financial institution for payment if, at the time the owner signs the application,
  - (a) either:
    - (i) the value of all assets in all LIRAs, Life Income Funds, and Locked-in Retirement Income Funds which are held by the owner and subject to the Act is less than 10 percent of the YMPE for the calendar year in which the application is made; or
    - (ii) where the owner has reached the earlier of age 55 or the earliest date on which the member or former member would have been entitled to receive a pension benefit under the pension plan from which the money was transferred, the value of all assets in all LIRAs, Life Income Funds, and Locked-in Retirement Income Funds which are held by the owner and subject to the Act is less than 40 percent of the YMPE for the calendar

year in which the application is made;

and

- (b) within the same calendar year, the owner has not made a withdrawal due to financial hardship under section 14 from the LIRA or, where part of the LIRA corresponds to amounts transferred directly or indirectly from another LIRA, Life Income Fund, or Locked-in Retirement Income Fund, the owner has not made a withdrawal under section 14 from the original retirement savings arrangement.

13. An application for payment under section 12 shall be:

- (a) on a form approved by the Superintendent; and
- (b) where the owner is a former member of a pension plan, accompanied by a waiver of the joint and survivor pension entitlement, in the form and manner required by the Superintendent.

#### **Withdrawals due to Financial Hardship**

14. Notwithstanding section 10, the contract shall provide for a lump sum withdrawal due to financial hardship, subject to the following:

- (a) an application for a withdrawal due to financial hardship under this section must be made directly to the financial institution providing the LIRA;
- (b) the owner may apply for withdrawal due to financial hardship once within a calendar year for each category of financial hardship described in subsection 14(c)(i) in respect of each LIRA, Life Income Fund, or Locked-in Retirement Income Fund;
- (c) subject to any requirements outlined in this section, an owner is eligible to complete an application to withdraw an amount not greater than the sum of the following amounts:
  - (i) an amount with respect to one of the following categories:
    - (A) Low Income: Where the owner's expected total income for the one-year period following the date on which the application is signed, from all sources other than the withdrawal amount, is not more than 66.66% of the YMPE for the calendar year in which the application is signed, the amount determined by subtracting 75% of the expected total income from 50% of the YMPE for the calendar year in which the application for the withdrawal is signed;
    - (B) Medical Expenses: Where the owner is unable to pay for medical expenses incurred or to be incurred by the owner, the owner's principal beneficiary, or a dependent of either and the medical expenses are not paid by and are not subject to reimbursement from any other source, the amount required to pay these medical

- expenses;
- (C) Disability-related Expenses: Where the owner is unable to pay for disability related expenses incurred or to be incurred by the owner, the owner's principal beneficiary, or a dependent of either and the expenses are not paid by and are not subject to reimbursement from any other source, the amount required to pay these disability-related expenses;
  - (D) Mortgage Payments: Where the owner or the owner's principal beneficiary has received a written notice in respect of a default on a mortgage that is secured against the principal residence of the owner or the owner's principal beneficiary which will result in foreclosure or power of sale if the default is not rectified, the amount required to rectify the default;
  - (E) Rental Arrears: Where the owner or the owner's principal beneficiary has received a written notice in respect of arrears in the payment of rent for the principal residence of the owner or the owner's principal beneficiary and the owner or the principal beneficiary could be evicted if the arrears remain unpaid, the amount required to pay the rental arrears; or
  - (F) First Month's Rent and Security Deposit: Where the owner is unable to pay the first month's rent and the security deposit required to rent a principal residence for the owner or the owner's principal beneficiary, the amount required to pay the first month's rent and the security deposit;

and

- (ii) the amount of any applicable tax required to be withheld by the financial institution providing the LIRA.

15. An application for withdrawal under section 14 shall be:
- (a) on a form approved by the Superintendent and shall include any supporting documentation required by the Regulations, which are specified on the form; and
  - (b) where the owner is a former member of a pension plan, accompanied by the written consent of the principal beneficiary of the former member, in the form and manner required by the Superintendent.

#### **Withdrawals due to Non-Residency**

16. Notwithstanding section 10, the contract shall provide for a lump sum withdrawal equal to the value of the entire contract where the owner provides the financial institution providing the LIRA with:
- (a) a statutory declaration in accordance with the *Evidence Act* confirming they have resided outside Canada for at least 2 consecutive calendar years and are residing

outside of Canada on the date of signing the declaration; and

- (b) where the owner is a former member of a pension plan, the written consent of the principal beneficiary of the former member, in the form and manner required by the Superintendent.

### **Death Benefits**

- 17. On the death of a former member of a pension plan who has a principal beneficiary, the surviving principal beneficiary, or where there is no surviving principal beneficiary or the surviving principal beneficiary had waived entitlement in the form and manner required by the Superintendent, a designated beneficiary, or where there is no designated beneficiary, the estate of the member or former member is entitled to a lump sum payment of the full value of the contract.
- 18. On the death of an owner who is not a former member of a pension plan, the full value of the contract shall be paid to the designated beneficiary or, where there is no designated beneficiary, to the owner's estate.

### **Amending the LIRA**

- 19. Subject to section 20, the financial institution providing the LIRA shall not amend the contract except where the financial institution has given the owner of the LIRA at least ninety days' written notice and an explanation of the proposed amendment.
- 20. An amendment that would result in a reduction in the owner's benefits under the contract is permitted only where:
  - (a) the financial institution is required by law to make the amendment; and
  - (b) the owner is entitled to transfer the balance in the LIRA under the terms of the contract that existed before the amendment is made.
- 21. When making an amendment under section 20, the financial institution shall:
  - (a) provide written notice to the owner of the LIRA of the nature of the amendment; and
  - (b) allow the owner at least ninety days after the written notice is given to transfer all or part of the balance in the LIRA.
- 22. Notice under sections 19 and 21 shall either be sent by mail to the owner's address as set out in the records of the financial institution or, subject to receiving the authorization of the owner, be delivered to the owner by electronic means provided that the e-communication is accessible by the owner and capable of being retained to be usable for subsequent reference.
- 23. This Directive replaces Directive No. 4 last amended December 13, 2001 and shall take effect on March 1, 2021.