Newfoundland Labrador

Government of Newfoundland and Labrador
Service NL
Pension Benefit Standards Division

DIRECTIVE NO. 5

Issued, effective January 1, 2018, pursuant to Section 40 of the *Pension Benefits Act, 1997*

DATED at St. John's, Newfoundland and Labrador the 4th day of January, 2018

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Life Income Fund Requirements

1. In this Directive,

   (a) "financial institution" means the underwriter, depositary or issuer of a LIF;

   (b) "fiscal year" means a fiscal year of the LIF;

   (c) "LIF" means a registered retirement income fund established in accordance with the *Income Tax Act* (Canada) that is locked-in in accordance with the Regulations and meets the conditions set out in this Directive, known as a Life Income Fund;

   (d) "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* (Canada), 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;

(e) "list" means the appropriate list established and maintained under section 18 of the Regulations;

(f) "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 LIF 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;

(g) "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.

2. A financial institution must file with the Superintendent a specimen certified copy of a LIF and any amendments for review and approval.

3. The Superintendent will maintain a list of financial institutions approved by the Superintendent as offering acceptable LIF products.

4. The conditions on which a transfer of locked-in money to a LIF 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 LIF may be purchased with respect to an entitlement to a pension under a pension plan by:

(a) a member or former member of the pension plan who has obtained the written consent of his or her principal beneficiary, if any; 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 shall not affect a transfer to a financial institution unless the administrator has:

(a) ascertained that the financial institution's name and LIF are currently on the list of approved contracts; and

(b) advised the financial institution in writing that, subject to Part VI of the Act, no withdrawal, commutation or surrender of money is permitted.

Establishing the LIF

7. A contract establishing a LIF shall incorporate the applicable definitions set out in the Act, Regulations, and section 1 of this Directive, and shall include the following provisions:

   (a) the name and address of the financial institution providing the LIF;

   (b) a description of the owner's power, respecting investment of the assets in the LIF;

   (c) a statement that the owner agrees not to assign, charge, anticipate or give as security money payable under a LIF;

   (d) a description of the method for determining the value of the LIF. This valuation method must be the one that is to be used to establish the LIF's value upon the death of a person entitled to payment, upon the establishment of a life annuity contract or upon a transfer of assets from the LIF; and

   (e) the fiscal year of the LIF must end on the 31st day of December and must not exceed twelve months.

Periodic Payments out of the LIF

8. A LIF specimen contract shall provide as follows:

   (a) payment out of the LIF must not begin before the earlier of age 55 or the earliest date on which the member or former member could receive a pension benefit under the Act or the originating pension plan from which money was transferred and not later than the last day of the second fiscal year;

   (b) the owner must decide the amount to be paid out of the LIF each year, either at the beginning of the fiscal year of the LIF or at another time agreed to by the financial institution and the decision expires at the end of the fiscal year to which it relates;

   (c) if the owner does not decide the amount to be paid out of the LIF for a year, the minimum amount determined under paragraph 8(i) shall be deemed to be the amount paid;

(d) the amount of income paid out of the LIF during a fiscal year must not exceed the "maximum", being the greater of (i) and (ii) as follows:

(i) the amount calculated using the following formula

C / F

in which

C = the value of the assets in the LIF at the beginning of the fiscal year.

F = the present value, at the beginning of the fiscal year, of a pension of which the annuity payment is $1 payable at the beginning of each fiscal year between that date and the 31st day of December of the year in which the owner reaches ninety years of age; and

(ii) the amount of the investment earnings, including any unrealized capital gains or losses, of the LIF in the immediately previous fiscal year;

(e) the value F in paragraph (d) must be established at the beginning of each fiscal year of the LIF using an interest rate as follows:

(i) for the first fifteen years after the date of the valuation, the greater of 6% per year and the percentage obtained on long-term bonds issued by the Government of Canada for the month of November preceding the date of the valuation, as compiled by Statistics Canada and published in the Bank of Canada Review under identification number V122487 in the CANSIM System; and

(ii) for the sixteenth and each subsequent year, a rate of 6% per year;

(f) subject to paragraph (g), an owner is entitled to receive additional temporary income where:

(i) the maximum amount of income the owner is entitled to receive for the calendar year in which the application is made, calculated as "B" under paragraph (g), is less than 40% of the Year's Maximum Pensionable Earnings (YMPE) under the *Canada Pension Plan* for the calendar year in which the application is made; and

(ii) the owner has not reached his or her 65th birthday at the beginning of the fiscal year in which he or she makes application for additional temporary income;

(g) the amount of the additional temporary income paid out of the LIF in a fiscal year must not exceed the "maximum" using the following formula:

A – B

in which

A = 40% of the YMPE for the calendar year in which an application is made.

B = the maximum amount of income the owner is entitled to receive from all LIFs, Locked-in Retirement Income Funds, life annuity contracts and pension plans governed by the Act or established under or governed by an Act of Canada or another Province or Territory, except income from a pension under the *Canada Pension Plan*, for the calendar year in which the application is made;

(h) an application for additional temporary income under paragraph (f) shall be:

(i) on a form approved by the Superintendent,

(ii) where the owner is a former member of a pension plan, accompanied by the written consent of the principal beneficiary of the former member, and

(iii) submitted to the financial institution at the beginning of the fiscal year of the LIF, unless otherwise permitted by the financial institution;

(i) the amount of income paid out of the LIF during a fiscal year must not be less than the minimum amount prescribed for registered retirement income funds under the *Income Tax Act* (Canada);

(j) for the initial year of the LIF, the "maximum" in paragraphs (d) and (g) shall be adjusted in proportion to the number of months in that fiscal year divided by 12, with any part of an incomplete month counting as one month;

(k) if a part of the LIF corresponds to amounts transferred directly or indirectly from another LIF or Locked-in Retirement Income Fund of the owner during the fiscal year, the "maximum" in paragraphs (d) and (g) shall be deemed to be zero in respect of the part transferred in;

(l) notwithstanding paragraph (k), the financial institution may allow money to be paid to the owner provided that the total amount received by the owner from all financial institutions in respect of that part transferred in during the fiscal year does not exceed the "maximum" in paragraphs (d) and (g) for that part. In this case, the financial institution must receive information, in writing, from the prior financial institution(s) which confirms the amount already paid in the fiscal year in respect of that part of the LIF; and

(m) 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.

Withdrawals from the LIF

9. 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 a form and manner acceptable to the Superintendent.

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) 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 plan from which money was transferred,

b) the value of all assets in all LIFs, Locked-in Retirement Income Funds and Locked-In Retirement Accounts owned by him or her and governed by Newfoundland and Labrador pension benefits legislation is less than 40 percent of the YMPE for that calendar year, and

c) the owner has not, within the same fiscal year, elected to receive additional temporary income under subsection 8(f) or, where a part of the LIF corresponds to amounts transferred directly or indirectly from another LIF or Locked-in Retirement Income Fund, elected to receive additional temporary income from that LIF or Locked-in Retirement Income Fund.

11. An application under section 10 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 by the principal beneficiary of the former member, in the form and manner required by the Superintendent.

Transferring Assets from the LIF

12. The owner of the LIF may transfer any or all the assets in it,

(a) to another LIF;

(b) to a Locked-in Retirement Income Fund;

(c) to purchase an immediate life annuity contract that meets the requirements of the Superintendent; or

(d) before December 31st in the year in which the owner reaches the age at which a pension benefit is required to begin under the *Income Tax Act* (Canada), to a Locked-In Retirement Account.

13. In the contract establishing the LIF, the financial institution must agree to make such a transfer within thirty days after the owner requests it. This does not apply with respect to the transfer of assets held as securities whose term of investment extends beyond the thirty day period.

14. If the assets in the LIF consist of identifiable and transferable securities, the financial institution may transfer the securities with the consent of the owner.

Death Benefits

15. On the death of a former member 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 acceptable to the Superintendent, a designated beneficiary, or where there is no designated beneficiary, the estate of the member or former member is entitled to receive a lump sum payment of the full value of the contract.

16. Where the owner is not a former member, a lump sum payment of the full value of the contract shall be paid to the designated beneficiary or, where there is no beneficiary, to the owner's estate.

Amending the LIF

17. Subject to section 18 the financial institution providing the LIF shall not amend the contract except where the financial institution has given the owner of the LIF at least ninety days' notice of a proposed amendment.

18. 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 LIF under the terms of the contract that existed before the amendment is made.

19. When making an amendment under section 18 the financial institution shall,

    (a) notify the owner of the LIF of the nature of the amendment; and

    (b) allow the owner at least ninety days after the notice is given to transfer all or part of the balance in the LIF.

20. Notice under sections 17 and 19 shall be sent by registered mail to the owner's address as set out in the records of the financial institution.

Information to be provided by the Financial Institution

21. In the contract establishing the LIF, the financial institution must agree to provide the information described in section 22 to the person indicated.

22. At the beginning of each fiscal year, the following information must be provided to the owner:

(a) in relation to the previous fiscal year: the sums deposited; the amount of the investment earnings, including any unrealized capital gains or losses; the payments made out of the LIF; and the fees charged;

(b) the value of the assets in the LIF;

(c) the minimum amount that must be paid out of the LIF to the owner during the current fiscal year;

(d) the maximum amount of income under section 8(d) that may be paid out of the LIF to the owner during the current fiscal year; and

(e) if applicable, notification that the owner may be entitled to receive additional temporary income under section 8(f) during the current fiscal year.

23. If the balance of the LIF is transferred as described in section 12, the owner must be given the information described in paragraph 22 determined as of the date of the transfer.

24. If the owner dies, the person entitled to receive the balance must be given the information described in section 22, determined as of the date of the owner's death.

25. This Directive replaces Directive No. 5 last amended January 1, 2007 and shall take effect on January 1, 2018.