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FSRA is actively reviewing all FSCO regulatory direction, including but not limited to forms, guidelines and FAQs.

Until FSRA issues new regulatory direction, all existing regulatory direction remains in force.

Individual Pension Plans

Ontario Regulation 178/12 made under the Pension Benefits Act (the "PBA Regulation") includes a definition for "individual pension plan" (IPP). The treatment of such plans under the Pension Benefits Act (PBA) will be similar to that of designated plans. Both types of plans are likely to be put in place for executives or persons connected to the employer. Both designated plans and **IPPs must comply with both the Income Tax Act (Canada) ITA and the PBA requirements.**

Answers to frequently-asked-questions (FAQs) are provided below. Each FAQ shows the date on which it was posted.

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General

Q1. What is a 'designated plan'?

A1. A designated plan is defined in the PBA Regulation as a pension plan that is a designated plan for the purposes of the ITA. It is defined in the Income Tax Regulation as:

- a registered pension plan that contains a defined benefit provision;
- it is not maintained pursuant to a collective bargaining agreement; and
- the total pension credits of all specified individuals under the designated pension plan for the year exceeds 50% of the total pension credits of **all** individuals under the particular designated pension plan for the year. A specified individual is one who is either connected to an employer who participates in the plan or one whose earnings exceed 2.5 times the Year's Maximum

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Pensionable Earnings (YMPE).

FSCO will rely on the Canada Revenue Agency's (CRA) advice as to whether or not a plan meets the requirements of the ITA in order to be considered a designated plan. -06/2012

Q2. What is an 'individual pension plan' (IPP)?

A2. An IPP is defined in the PBA Regulation as a pension plan that is an IPP for the purposes of the ITA.

The Income Tax Regulation defines an IPP as:

- a registered pension plan that contains a defined benefit provision; and
- at any time in the year or a preceding year, the plan
 1. has three or fewer members and at least one of them is related (within the meaning of the ITA) to a participating employer in the plan;; or,
 2. is a designated plan and it is reasonable to conclude that the rights of one or more members to receive benefits under the plan exist primarily to avoid the application of paragraph (1).

Many individual pension plans may also be designated plans (but not all). -06/2012

Q3. What is a 'connected person' or a 'significant shareholder'?

A3. 'Connected person' is a term used and defined in the Income Tax Regulation (subsection 8500(3)). – Please refer to those regulations and/or to material produced by the CRA (such as the Registered Pension Plan guide) for a precise definition. In general terms, a 'connected person' is one who either has a 10% or greater ownership interest (voting and/or non- voting) in the employer, or who is related to the employer.

The PBA Regulation defines a 'significant shareholder' as an individual who (alone or in combination with a parent, spouse or child) owns or has a beneficial interest, directly or indirectly, in shares that represent 10 per cent or more of the voting rights attached to the shares of the employer who contributes to the pension plan. The term 'significant shareholder' under the PBA Regulation, is similar, but not identical, to the term 'connected person' as used in the Income Tax Regulation. -06/2012

Q4. Do the same Ontario regulatory requirements apply to designated plans and individual pension plans (IPPs) as for other single employer defined benefit plans?

A4. In general, the requirements under the PBA are the same for designated plans and IPPs as for other single employer defined benefit pension plans. However, there are some exceptions:

- Designated plans and IPPs are not eligible for Pension Benefit Guarantee Fund (PBGF) coverage and are therefore not required to pay PBGF assessment fees;

- Under a designated plan or an IPP, an employer is only required to make contributions if they are eligible contributions under the ITA;
- There are specific restrictions on funding for designated plans under the ITA. The funding requirements for designated plans in Ontario are discussed in [FSCO's Policy on Funding Requirements for Designated Plans in Ontario](#). These requirements only apply to an IPP if it also meets the definition of a designated plan;
- A significant shareholder and the employer may jointly consent, in writing, to the reduction of the significant shareholder's pension or pension benefit or ancillary benefits. Designated plans and IPPs may have significant shareholder members but this is not always the case. -06/2012

Form 1.2: Individual Pension Plan Certification

Q1. How do I notify the Financial Services Commission of Ontario (FSCO) that the plan is an IPP?

A1. FSCO has introduced a new Form - [Form 1.2: Individual Pension Plan Certification](#) - to streamline its process to identify an IPP. The plan administrator completes and signs the form, certifying that the pension plan complies with Section 1.(1) of Regulation 909 of the PBA and meets the definition of an IPP under the Income Tax Act (ITA) for purposes of the PBA.

Subsequent to the filing of this certification, if it is determined that the plan is not an IPP, the plan administrator will be responsible for all filings, fees and penalties associated with the correct status of the pension plan in FSCO's records and bringing all related filings and other PBA requirements up to date. -07/2014

Q2. How will FSCO use the information collected in Form 1.2: Individual Pension Plan Certification Form?

A2. FSCO will rely on the administrator's certification that the pension plan is an IPP. FSCO may also share this information with the Canada Revenue Agency (CRA) for confirmation that the plan meets the requirements to be considered an IPP under the ITA.

If CRA advises FSCO that the plan is not an IPP, FSCO will take appropriate regulatory action to ensure that the plan is in compliance with the PBA. -07/2014

Custodial Agreements

Q1. I am the administrator of an individual pension plan (IPP) that is funded under a trust agreement with individual trustees. Am I required to file a separate custodial agreement along with my application for registration of a pension plan?

A1. Yes. Section 9(2)(c) of the Ontario Pension Benefits Act (PBA) requires the administrator of a pension plan to file certified copies of the documents that create and support the pension fund along with the application for registration of a pension plan. In FSCO's view, this includes a separate custodial agreement, unless the pension fund trustee is a financial institution that is appointed as trustee and custodian and 'the financial institution' has custody of the pension fund assets. -06/2016

Q2. What is a pension fund custodian?

A2. A pension fund custodian is the financial institution that holds some or all of the pension fund's assets, pursuant to an agreement with the pension fund trustees, and is responsible for their safekeeping. Typically, the custodian for an IPP will be a brokerage house (e.g., Ontario registered investment dealer). -06/2016

Q3. What is a custodial agreement?

A3. A custodial agreement is the legal agreement between the pension fund trustee and the custodian. -06/2016

Q4. What are the custodial agreement requirements imposed under the PBA?

A4. Section 79(1) of Regulation 909 under the PBA requires that the assets of every pension plan be invested in accordance with the federal investment regulations (section 6, 7, 7.1 and 7.2 and Schedule III to the federal Pension Benefits Standards Regulations, 1985), as modified in sections 47.8 and 79 of Regulation 909.

Section 6 of the federal investment regulations sets out investment requirements and defines "custodial agreement". Section 6(2) of the federal investment regulations requires that a custodial agreement provide that:

- an investment made or held on behalf of the pension plan constitutes part of the pension fund;
- the investments shall not at any time constitute an asset of the custodian or nominee; and,
- the custodian shall maintain records that are sufficient to allow the ownership of any investment to be traced to the pension plan at any time.

The pension fund trustee and the custodian should enter into a custodial agreement that clearly demonstrates that the sole purpose of opening any account is to hold pension fund assets. If the pension fund trustee is a board of trustees, one or more trustees should sign the custodial agreement, in accordance with the requirements of the trust agreement. -06/2016

Q5. If the custodian for the pension fund changes, am I required to file the new custodial agreement?

A5. Yes. Section 12(3) of the PBA requires the administrator of a pension plan to file a certified copy of each document that changes the documents that create and support the pension fund. In FSCO's view,

this includes a custodial agreement. -06/2016

Q6. Do I have to file a custodial agreement if my IPP is entirely invested in mutual or segregated funds?

A6. No. If an IPP is entirely invested in mutual or segregated funds there will be no separate custodial agreement. In such cases, the administrator should confirm this in writing and include a copy of the confirmation of holdings from the mutual fund record-keeper and/or the life insurance company.
-06/2016

IPP Minimum Withdrawals

Q1. I am turning 72 this year and must, under the ITA, begin to receive benefit payments from my IPP. The ITA rules require the IPP to pay me the greater of: 1. the regular pension amount payable under the terms of the IPP; or, 2. the minimum amount that would be required to be paid from the IPP as if the IPP assets were held in a Registered Retirement Income Fund (RRIF). Is the latter option possible under the PBA?

A1. No. The IPP is a registered defined benefit pension plan under the PBA, and the IPP must comply with the provisions of the PBA. The PBA does not allow for RRIF type payments from a pension plan. Therefore, benefit payments from the IPP cannot be paid out as if the IPP assets were held in a RRIF. However, there may be circumstances when surplus assets, if the plan has any, under the IPP may be used to bring the pension being paid to the retired member up to the required RRIF level. For example, this could be done where the plan terms permit payment of surplus from the ongoing plan to the retired member(s) of the plan. -03/2013

Q2. In July 2012 the CRA released information regarding the requirement to amend the terms of an IPP, as defined under subsection 8300(1) of the Income Tax Regulations, to comply with the IPP minimum withdrawal condition under subsection 8503(26) of the Regulations. I am aware that FSCO is refusing to register such an amendment because the Pension Benefits Act does not allow for RRIF type payments. How should I proceed?

A2. The Registered Plans Directorate (RPD) of the CRA issued a clarification to its requirement to file an amendment regarding the terms of an IPP. The clarification said, in part,

"If the plan is subject to pension standards legislation, and the regulator has publicly stated that it will refuse such an amendment, the RPD will not require the filing of the amendment for the time being. Further guidance will be provided in relation to the filing of the amendment in due course. However, even if an amendment is not required at this time, IPPs with members who turned 71 in prior years are still required to pay out the minimum amount. Failure to comply with subsection 8503(26) of the Regulations makes an IPP a revocable plan and the Minister may issue a notice of intent to revoke the registration of the plan as set out in paragraphs 147.1(11)(c) and (l) of Income Tax Act. If the administrator cannot make a payment based upon the IPP minimum amount, due to the restrictions of the pension regulator, then the administrator of the plan should advise the RPD. The RPD will deal with each IPP on a case by case basis to determine whether or not to pursue revocation of the plan. Where an

actual conflict exists (for example, an IPP minimum amount would be more than the plan's actuarial surplus), this information will be taken into consideration."

Any questions about this issue should be directed to the Canada Revenue Agency – Registered Plans Directorate. -03/2013

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