Financial Services Commission of Ontario
Commission des services financiers de l'Ontario

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

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

Introduction: The Locked-In Retirement Account

Clause 42(1)(b) of the PBA provides that a former member of a pension plan is entitled to require the administrator to pay an amount equal to the commuted value of the former member's deferred pension into a prescribed retirement savings arrangement.

This policy provides an overview of the main features and requirements of one such prescribed retirement savings arrangement, the Locked-in Retirement Account (LIRA). A LIRA is a registered retirement savings plan (RRSP) that meets the requirements set out in Schedule 3 to the Regulation (Schedule 3).

The key feature of LIRAs that distinguishes them from regular (non-locked-in) RRSPs is that the funds must be administered as a pension or deferred pension in accordance with the PBA and Regulation (section 20(3) of the Regulation). This means that, among other things, no money may be withdrawn from LIRAs except in circumstances prescribed by Regulation. Section 3 of Schedule 3 states that money in a LIRA cannot be commuted, withdrawn or surrendered in whole or in part, except as permitted by section 49 or 67 of the Act, section 22.2 of the Regulation, or

by Schedule 3. The limited circumstances in which withdrawals are permitted are discussed in this policy.

In addition, Section 2(4) of Schedule 3 requires that the LIRA contract provide that the owner agrees not to assign, charge, anticipate or give as security money in the account except as required by an order under the *Family Law Act* (FLA), a family arbitration award or a domestic contract.

General Provisions of the Ontario LIRA

Ontario members of federally-regulated plans and multi-jurisdictional plan members

Generally, members of pension plans who work in Ontario are covered by the PBA and Regulation, unless they work in federally regulated industries such as banking, telecommunications, airline transportation and others. Pension plans in those industries are regulated under the Pension Benefits Standards Act, 1985 (PBSA), and members of those plans are not eligible to purchase an Ontario LIRA. These individuals are restricted to purchasing retirement vehicles that are provided for under the PBSA.

An owner of an Ontario LIRA cannot combine the money in it with another LIRA or locked-in account governed by the pension laws of another jurisdiction.

Income Tax Act requirements and the LIRA

LIRAs may be structured in any manner as long as they satisfy the requirements of the PBA and Regulation and the requirements under the federal Income Tax Act (ITA) for an RRSP.

In essence, all LIRAs are RRSPs with additional requirements. All LIRAs must qualify as RRSPs. The financial institution that administers the LIRA is responsible for ensuring that the LIRA satisfies the ITA requirements and is registered with the Canada Revenue Agency (CRA).

For additional information regarding RRSPs, contact the Registered Plans Directorate of CRA at 1-800-267-3100 or visit the CRA website.

Who can issue a LIRA and Specimen LIRA contracts

Any financial institution may issue an Ontario LIRA. Unlike some Canadian jurisdictions, Ontario does not require specimen LIRA contracts to be approved by the pension regulatory authority. FSCO does not approve LIRA contracts and will not review specimen contracts.

No Differentiation on the Basis of Sex

The contract for the LIRA must contain a statement as to whether the initial amount transferred to the LIRA was determined in a manner that differentiated on the basis of sex (section 2(6) of Schedule 3). This information is required because if an annuity is eventually purchased using the money in the LIRA, the annuity cannot differentiate on the basis of the sex of the LIRA owner unless the initial transfer amount was determined on a sex distinct basis (sections 5(1)(d) and

5(6) of Schedule 3). Locked-in money that represents the value of the pension earned on or after January 1, 1987 must be determined on a basis that does not differentiate on the basis of sex.

Information that must be provided by the financial institution (Section 14, Schedule 3)

At the beginning of each fiscal year, the financial institution administering the LIRA must provide the LIRA owner with the value of the assets in the LIRA as of the beginning of the fiscal year, and with respect to the previous fiscal year, must provide the following information:

- the sums deposited;
- any accumulated investment earnings, including any unrealized capital gains or losses;
- the payments made out of the LIRA;
- the withdrawals taken out of the LIRA; and
- the fees charged against the LIRA.

When money is transferred out of the LIRA, the financial institution must provide the owner with the above information as of the date of the transfer.

When the LIRA owner dies, the person entitled to receive the money in the LIRA must be given the same information required to be given at the beginning of the fiscal year, but determined as of the date of the LIRA owner's death.

Amending the LIRA contract

The financial institution that administers the LIRA must agree not to amend the contract governing the LIRA if the amendment would result in a reduction in the LIRA owner's rights under the contract, unless the institution is required by law to make the amendment. In such a situation the LIRA owner must be given the option to transfer the money out of the LIRA under the terms of the contract before the amendment is made (see next section regarding where money in a LIRA may be transferred). The institution must notify the LIRA owner of the nature of this amendment in writing. The LIRA owner must be allowed at least 90 days after notice is given to transfer all or part of the money in the LIRA.

For amendments other than that described in the paragraph above, the financial institution must give the LIRA owner at least 90 days prior notice of a proposed amendment (Section 13, Schedule 3).

Transferring Funds out of a LIRA

Section 5(1) of Schedule 3 states that the owner of a LIRA may transfer any or all of the assets in it,

(a) to the pension fund of a pension plan registered under the pension benefits legislation in any Canadian jurisdiction or to a pension plan provided by a government in Canada;
(b) to another locked-in retirement account;
(c) to a life income fund (LIF) that is governed by Schedule 1.1 of the Regulation; or
(d) to purchase an immediate or deferred life annuity that meets the requirements of section 22 of the Regulation.

It should be noted that the assets in the LIRA may only be transferred to the pension fund of another pension plan if that plan will accept it.

For additional information about LIFs, please refer to FSCO pension policy L200-303 (New LIFs).

Spousal Death Benefit

When the LIRA owner dies, the owner's spouse at the time of death is generally entitled to receive a spousal death benefit. This is an amount equal to the value of the assets in the LIRA (section 11 of Schedule 3).

The death benefit is not locked-in and may be received in cash, or the surviving spouse may transfer the spousal death benefit directly to his/her own RRSP or Registered Retirement Income Fund (RRIF), in accordance with, and if permitted by, the provisions of the ITA.

However, this legislated entitlement does not apply in certain situations:

- if the spouse had previously waived his/her entitlement to the death benefit and the waiver has not been cancelled (section 12 of Schedule 3);
- if the owner and the spouse were living separate and apart on the date of the owner's death due to a breakdown in their relationship; or
- if the LIRA owner was not a member or former member of the pension plan from which the LIRA funds were transferred directly or indirectly (meaning that the LIRA resulted from the pension benefit of someone other than the owner, such as the owner's former spouse as a result of a breakdown in their spousal relationship).

A spouse who is not entitled to the death benefit as a "spouse" may become entitled to the death benefit if the LIRA owner names him or her as the beneficiary.

Where the LIRA owner has no spouse, or if the spouse of the LIRA owner has waived entitlement to the spousal survivor benefit, or if the LIRA owner and spouse are living separate and apart on the date of the owner's death due to a breakdown in their relationship, the named beneficiary is entitled to the death benefit. If there is no named beneficiary, the owner's estate is entitled to the death benefit.

Division of the money in the LIRA on the breakdown of the spousal relationship

Effective January 1, 2012, new provisions under the PBA and the FLA regarding the valuation and division of pension benefits on the breakdown of a spousal relationship came into effect (sections 5(3.1) to 5(5.1) of Schedule 3). These rules apply to the division of money in a LIRA under a court order, family arbitration award or domestic contract made in accordance with the rules under the PBA and FLA.

The assets in the LIRA may be divided between the LIRA owner and his or her spouse or former spouse in accordance with a court order, family arbitration award or domestic contract provided that no more than 50% of the value of the assets in the LIRA as of the family law valuation date can be transferred to the spouse or former spouse (section 5(3.2) of Schedule 3).

Withdrawals and transfers from LIRAs – Special Applications

General Requirements

A LIRA owner can *only* apply for the special unlocking withdrawals and transfers under the rules described below if the LIRA is governed by Ontario laws. If the LIRA is governed by the laws of another province or by the federal government, the special unlocking provisions are not applicable. If the owner is uncertain as to which laws apply, he/she should contact the administrator of the pension plan from which the pension originated or the financial institution administering the LIRA.

Applications for unlocking based on shortened life expectancy (other than those based on the pension plan terms), small amounts, amounts that exceed the ITA limits and non-residents of Canada must be made on FSCO pension Form 5, signed by the owner of the LIRA, accompanied by spousal consent, if applicable, and any required supporting documentation. The completing application must be submitted to the financial institution which administers the LIRA, not to FSCO.

As of January 1, 2014, applications for financial hardship unlocking must be made to the financial institution that holds the locked-in account. Please see the heading **Applications for unlocking and withdrawal of money from a LIRA for financial hardship** on page 8.

If the LIRA owner has a spouse as of the date the application is signed, the spouse must consent to the application before the money can be withdrawn, except for applications for excess contributions above the ITA limit. The spouse is not obligated to consent to that application. If the spouse agrees to consent, he/she must complete Part 4 of Form 5 in the presence of a witness (a person other than the LIRA owner). Such person must be 18 years of age or older.

The spouse's consent is not required if the LIRA owner and spouse are living separate and apart as a result of a breakdown in their spousal relationship on the date the application is signed by the owner, or if all the money in the LIRA resulted from the pension benefit of someone other than the owner, such as the owner's former spouse as a result of a breakdown in their spousal relationship.

The completed Form 5 must be submitted to the financial institution which administers the LIRA within 60 days after the date on which it was signed by the owner and the spouse, if applicable.

The financial institution determines whether the application meets the requirements for unlocking. If the applicant qualifies for unlocking, the financial institution must pay the money within 30 days after it receives the completed application including any required accompanying documents.

Applications for withdrawal of money from a LIRA for shortened life expectancy (Section 8, Schedule 3 or PBA Section 49)

In addition to the general provisions for special applications described above, the following provisions apply to "shortened life expectancy" unlocking applications.

(1) Applications under the terms of the LIRA owner's former pension plan

If the pension plan from which the money in the LIRA originated has a provision allowing for the variation of payment due to the shortened life expectancy, the LIRA owner can apply to unlock and withdraw the money from the LIRA under those terms. The LIRA owner is responsible for satisfying the financial institution administering the LIRA that his/her former plan contained such a provision and that, based on medical evidence and the pension plan terms, the owner's life expectancy has been considerably shortened.

It is up to the institution to determine the format in which the application should be made. Form 5 should ***not*** be used where the LIRA owner is applying for shortened life expectancy unlocking and withdrawal under the terms of the pension plan.

(2) Applications under Section 8 of Schedule 3

A LIRA owner may apply to the financial institution to unlock and withdraw some or all of the money in the LIRA if he/she is suffering from an illness or physical disability that is likely to shorten his/her life expectancy to *less than two years*.

The application must be made on FSCO pension Form 5 and be accompanied by spousal consent, if applicable. A signed statement is also required from a physician licensed to practice medicine in Canada that, in his/her opinion, the LIRA owner has an illness or physical disability that is likely to shorten the LIRA owner's life expectancy to less than two years. The physician may either fill in Part 5 of Form 5, or provide an opinion as to the LIRA owner's life expectancy in another written and signed format, such as a letter. If the physician does not fill in Part 5, the letter must include a statement that the physician is licensed to practice medicine in a jurisdiction in Canada.

If the pension plan from which the money in the LIRA originated contained a variation of payment provision for shortened life expectancy, the LIRA owner has the choice to apply under the terms of section 8 of Schedule 3 (by using Form 5), or to apply under the terms of the former pension plan provisions (Form 5 should not be used). For example, where the plan contained a more generous shortened life expectancy criterion (e.g., a life expectancy of less than five years) instead of less than two years, the LIRA owner might prefer to apply under the terms of the plan.

An individual who successfully applies for shortened life expectancy must unlock and withdraw the money from his/her LIRA in cash and pay any applicable income tax. The option of transferring the money to an RRSP or RRIF is not available for this unlocking application.

Applications for withdrawal of money from a LIRA for a small amount at age 55 or over (Section 6, Schedule 3)

In addition to the general provisions for special applications described above, the following provisions apply to "small amounts" unlocking applications.

The LIRA owner may apply to withdraw *all* of the money in the LIRA if:

- the owner is at least 55 years old when he/she applies; and
- the value of all assets held in all the owner's Ontario locked-in accounts is less than 40% of the Year's Maximum Pensionable Earnings (YMPE) for the calendar year in which the application is made. (For the year 2014, this amount is 40% of $52,500.00 (the YMPE for 2014) = $21,000.00.)

The value of the assets held in each Ontario locked-in account must be based on the most recent statement about each locked-in account given to the owner by the financial institution, and each statement must not be dated more than one year before the date the application is signed.

A LIRA owner who satisfies the requirements for a small amount unlocking application may either withdraw all the money in cash or transfer all the money to an RRSP or RRIF in accordance with, and if permitted by, the ITA. The owner may not withdraw part of the money in cash and transfer the rest of the money to an RRSP or RRIF.

The application must be made on FSCO Form 5 and be accompanied by a spousal consent, if applicable.

Applications for withdrawal of money from a LIRA for an amount that exceeds ITA limits (Regulation section 22.2)

In addition to the general provisions for special applications described above, the following provisions apply to "amounts that exceed the ITA limits" unlocking applications.

The ITA imposes a limit on the amount that a former pension plan member may transfer from a registered pension plan to a locked-in account on a tax-deferred basis when he/she terminates employment or membership in the plan. Only amounts that do not exceed the ITA limit can be transferred to the locked-in account. If the amount of the commuted value of an individual's pension entitlement that is to be transferred from a pension plan to a locked-in account is greater than the amount allowed under the ITA for such a transfer, the administrator must pay the excess amount to the individual in a lump sum cash payment.

However, if an amount that exceeds the ITA limit has already been transferred to, or is currently held in, a LIRA, the owner may apply to the financial institution to unlock and withdraw the sum of the excess amount and any subsequent investment earnings, including any unrealized capital gains or losses, attributable to the excess amount. It is up to the financial institution that administers the LIRA to calculate the aggregate amount to be withdrawn as of the date of payment to the owner.

The application must be made on FSCO pension Form 5 and must include a written statement from either the administrator of the owner's former pension plan or CRA that sets out the excess amount that was transferred into the LIRA. The consent of the spouse is not necessary.

Questions regarding the ITA limit and rules should be made to the CRA's Registered Plans Directorate at 1-800-267-3100, or visit the CRA website.

Applications for withdrawal of money from a LIRA for non-residents of Canada (Section 7, Schedule 3)

In addition to the general provisions for special applications described above, the following provisions apply to "non-residents of Canada" unlocking applications.

Effective January 1, 2008, owners of all Ontario locked-in accounts, including LIRA owners, who are non-residents of Canada, may apply to unlock and withdraw all the money in their LIRA (and other Ontario locked-in accounts). The individual must have departed Canada at least two years before making the application.

The application must be made on FSCO pension Form 5 and be accompanied by a spousal consent, if applicable, as well as a written determination from CRA that the individual is a non-resident for the purposes of the ITA.

Information on CRA's criteria for determination that a person is a non-resident is available on their website at NR-73-Determination of Residency Status (Leaving Canada) and CRA's other information on residency status.

Applications for unlocking and withdrawal of money from a LIRA for financial hardship

Individuals who qualify under specific circumstances of financial hardship may apply for special access to the money in their locked-in account(s). Effective January 1, 2014, all applications for financial hardship unlocking must be made to the financial institution that holds and administers the locked-in account(s). There are four categories of financial hardship:

1. low expected income;
2. payment of first and last months' rent;
3. arrears of rent or debt secured on a principal residence (such as a mortgage); and
4. medical expenses.

All applications must be made based on one of these categories, on the Form that applies. The Forms along with User Guides (and other resources on the rules and process) are available on FSCO's website. The owner of the locked-in account must be the person who applies for financial hardship unlocking. An individual can make applications under different categories but must use the Form that applies to that category.