

Canadian
Association of
Pension
Supervisory
Authorities

CAPSA

**REPORT ON CAPSA'S WORK
ON
REGULATORY PRINCIPLES
FOR A
MODEL PENSION LAW**

October 31, 2008

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Dear Pension Stakeholder:

RE: Report on CAPSA's Work on Regulatory Principles for a Model Pension Law

On behalf of the Canadian Association of Pension Supervisory Authorities (CAPSA), I am pleased to announce the public release of CAPSA's final report on its work on *Regulatory Principles for a Model Pension Law* (the "model law principles") for the information of pension stakeholders. The report is available in electronic form on the CAPSA website at www.capsa-acor.org. Paper copies are available upon request from the CAPSA Secretariat.

CAPSA is an inter-jurisdictional association of pension regulators whose goal is to simplify and harmonize pension regulatory requirements while protecting the entitlements of pension plan members. In support of this goal, earlier this month, CAPSA released a proposed *Agreement Respecting Multi-Jurisdictional Pension Plans* for consultation, which, once implemented, would address the immediate need for clarity with respect to the administration and regulation of pension plans with members in more than one jurisdiction. CAPSA is now releasing a final report on its work on the model law principles, which is intended to promote the harmonization of pension legislation across Canada over the long-term.

In January 2004, CAPSA released a consultation paper entitled *Proposed Regulatory Principles for a Model Pension Law*. In 2004, CAPSA received feedback from face-to-face consultation sessions with over 300 stakeholders across Canada, as well as from over 70 written stakeholder submissions. Based on feedback from the consultations, the proposed model law principles were divided into three categories: non-contentious principles, principles requiring further development and contentious principles.

In September 2006, CAPSA decided to cease further work on the principles categorized as being contentious, since, based on the strong differences in their views, it would be difficult to achieve stakeholder consensus on these principles. However, CAPSA worked closely with key pension stakeholders in developing the non-contentious principles and the principles identified as requiring further development, which together represent more than 70 percent of the model law principles that were released for consultation in 2004.

CAPSA has now completed its work on the model law principles and is releasing the attached report which represents the conclusion of CAPSA's work on this initiative.

The principles contained in the attached report seek to balance the protection of pension plan members' rights and benefits with the need to simplify the

regulatory requirements for pension plans in Canada. The model law principles that CAPSA was able to develop represent, in CAPSA's view, current "best practices". The members of CAPSA have shared this report with their governments so that they can consider these principles when making legislative or regulatory amendments in their jurisdictions.

Although the attached material represents the conclusion of CAPSA's work on its model law initiative, CAPSA recognizes that the regulatory environment for pension plans is constantly changing and is committed to examining new regulatory issues as they arise. In addition, CAPSA intends to continue its support for initiatives aimed at the harmonization of pension regulation in Canada.

The principles that have been identified by CAPSA in the attached report should not be construed as the official position of any provincial or federal government or agency.

Requests for additional copies of the report, as well as any questions relating to this initiative, should be forwarded to:

Daniel Padro
Policy Manager
CAPSA Secretariat
5160 Yonge Street
17th Floor, Box 85
North York ON M2N 6L9
Tel: 416-590-7034
Fax: 416-590-7070
Email: capsa-acor@fSCO.gov.on.ca

On behalf of the members of CAPSA, I would like to take this opportunity to thank all of the stakeholders who have worked with us and participated in consultations related to this initiative.

Sincerely,

David Wild
Chair, CAPSA

Table of Contents

	<u>Page</u>
Part I: The CAPSA Model Law Initiative.....	4
Part II: Non-Contentious Principles for Common Pension Standards.....	10
Part III: Recommendations for Model Regulations.....	32
Part IV: Papers on Category-Two Principles.....	63
1. Introduction.....	64
2. Phased Retirement.....	65
3. Simplified Pension Plan.....	68
4. Flexible Pension Plans.....	73
5. Member Location and Applicable Legislation.....	75

Part I:

The CAPSA Model Law Initiative

The CAPSA Model Law Initiative

Background:

In Canada, the federal-provincial division of legislative powers is set out in the *Constitution Act, 1867* (formerly the *British North America Act, 1867*), which defines the scope of the power of the federal government and the powers of each individual provincial government. As a result of this constitutional division of powers, the responsibility for regulating pension plans in Canada is shared between the federal and provincial governments. Pension standards legislation was first introduced in Canada in the mid-1960s. Ontario was the first Canadian jurisdiction to introduce pension standards legislation, followed closely by Quebec, Alberta and the federal government. Over the years, all other Canadian jurisdictions have placed pension legislation in force, with the exception of Prince Edward Island.

Initially, when pension standards legislation was first adopted in Canada, the rules to which pension plans were subject were fairly similar across jurisdictions. However, over the years, through various amendments and reforms, legislative provisions respecting pension plans have evolved considerably and, while the principles underlying pension legislation have remained substantially similar across Canadian jurisdictions, differences in the details of legislative and regulatory provisions have emerged. As a result, a number of challenges arose for the pension regulatory system.

In addition to the challenges imposed on the regulatory system, pension stakeholders have noted that such differences in pension standards legislation impose high regulatory costs for plan sponsors. As a result of these issues, in the late 1990s, the Canadian Association of Pension Supervisory Authorities (CAPSA) initiated internal discussions regarding the development of principles for a model pension statute (the model law) for consideration by governments across Canada.

The Association of Canadian Pension Management (ACPM), as a major pension stakeholder, has advocated for greater harmonization of pension standards legislation in Canada for many years. In 1999, the ACPM's Advocacy and Government Relations Committee developed a proposal for a "Uniform Pension Benefits Standards Act" and presented this proposal to CAPSA.

In 2000, CAPSA designated the development of the model law as a strategic priority. In undertaking its model law initiative, CAPSA had envisaged the development of principles that governments across Canada could use as a model when reviewing and amending pension standards legislation. The intent was that, over time, this would lead to greater harmonization of pension standards legislation in Canada.

Model Law Consultation Process:

2004 Consultation on Model Law Principles

In January 2004, CAPSA released a document for consultation entitled, *Proposed Regulatory Principles for a Model Pension Law*. The document contained proposed principles underlying a model pension statute, which represented best practices in pension legislation. To a large extent, the principles in the document were developed with the focus on harmonization of existing standards. However, CAPSA also used this document to identify opportunities to enhance, as well as simplify, existing standards.

Over a six-month consultation period, CAPSA conducted ten face-to-face consultation sessions across Canada and met with more than 300 interested stakeholders. The consultation sessions were attended by representatives of all facets of the pension stakeholder community and valuable feedback was received. In addition to the feedback received during the sessions, over 70 formal written submissions were received in response to the consultation paper, representing a wide variety of stakeholder perspectives.

Parallel to the CAPSA model law consultations, separate consultation sessions were held in Quebec, by the Régie des rentes, to receive feedback from Quebec pension stakeholders.

2005 Consultation on Funding Principles

Harmonized rules for the funding of pension plans were a key component of the CAPSA model law initiative. Therefore, in June 2005, CAPSA released a separate consultation paper proposing detailed funding principles to be included in the model law. The consultation paper proposed that funding requirements should:

1. provide appropriate assurance that sufficient plan assets are maintained to deliver the promised benefits in a defined benefit plan, particularly in the situation of employer bankruptcy; and
2. encourage the fair allocation of responsibility for risk, and access to rewards, among plan sponsors and members.

The proposed funding principles in the consultation paper were mostly based on existing pension legislation. However, the paper did propose a number of principles that are not part of existing legislative standards.

In the consultation paper, stakeholders were asked to provide feedback on three key proposals:

1. Strengthening pension funding rules.
2. Requiring the adoption of a plan funding policy.
3. Establishing separate funding rules for defined benefit pension plans where the employer(s) and collective bargaining agent have negotiated the amount that the employer is required to contribute (Negotiated Contribution Defined Benefit Pension Plans).

The consultations, which included meetings with key stakeholder organizations, concluded in November 2005.

Results of Model Law Consultations:

As noted above, CAPSA received feedback from consultation sessions with over 300 stakeholders across Canada, as well as from over 70 written stakeholder submissions. The majority of stakeholder submissions supported the overall goals of the model law project and recognized the need for the harmonization of pension legislation. However, some stakeholders did not support the goals of the project – this was particularly noted with respect to stakeholders representing pension plans that operate in only one jurisdiction. In addition, the majority of the principles proposed in the consultation document received support. However, the proposed principles that diverged from existing provisions were largely not supported by stakeholders.

Based on feedback from the consultations, the proposed model law principles were divided into three categories: non-contentious principles, principles requiring further development and contentious principles.

Non-Contentious Principles (Category-One Principles):

Approximately 70 percent of the model law principles were categorized as “non-contentious”, as consensus was easily achieved among the majority of stakeholders. The majority of these principles related to plan administration and minimum standards for entitlements to benefits on termination, death, or retirement. For the most part, the feedback received on the non-contentious principles was technical in nature and it was not difficult to reach consensus among stakeholders.

As a result of the stakeholder consensus on this category of model law principles, this was the first set of principles for CAPSA to finalize. CAPSA established a Common Standards Task Force (comprised of CAPSA members), as well as a Stakeholder Task Force (comprised of members representing various stakeholder groups¹) to work together in order to develop and finalize the

¹ The Stakeholder Taskforce included stakeholder representation from the Association of Canadian Pension Management (ACPM), the Canadian Life and Health Insurance Association (CLHIA), the Canadian Institute of Actuaries (CIA), Canadian Labour Congress (CLC), Ontario Bar Association (OBA), and the Multi-Employer benefit Council of Ontario (MEBCO).

non-contentious (or common standards) principles of the model law. CAPSA finalized and approved the Common Standards principles for the CAPSA model law in April 2006.

Subsequent to CAPSA approval of the common standards principles, the Common Standards Task Force continued to work with the Stakeholder Task Force in order to develop recommendations for model regulations related to the Common Standards principles. The recommendations for model regulations were finalized and approved by CAPSA in March 2007.

Principles Requiring Further Development (Category-Two Principles):

A number of stakeholders commented that, for certain model law principles, additional details regarding the application of the principles would be required. These principles were categorized as Category-Two Principles.

Such principles included detailed rules governing phased retirement provisions, simplified pension plans, flexible pension plans, member location, unlocatable members, trust provisions, fiduciary role, and rule-making authority for pension regulatory authorities.

The CAPSA Model Law Committee has developed and completed the Category-Two principles relating to phased retirement, simplified pension plans, flexible pension plans and member location, which were approved by CAPSA in October 2007. These finalized principles are included in the attached package along with the background, related definitions and recommended regulations for each principle.

Other Category-Two principles, including unlocatable members, trust provisions and fiduciary role, relate to “emerging issues” to which CAPSA will continue to work on developing solutions as part of the implementation of its new strategic plan.

As CAPSA worked on developing the Category-Two principles, the principle relating to rule-making authority was re-categorized as a contentious (Category-Three) principle, as significant differences in stakeholder views relating to this principle were noted.

Contentious Principles (Category-Three Principles):

The third category of model law principles identified by the CAPSA Model Law Committee were determined to be “contentious”, as strong differences in stakeholder views were noted during the consultation period. Included in this category of principles were the proposed plan administrator model, pension splitting on marriage breakdown, contentious funding rules (as identified through the 2005 consultation on funding principles), surplus distribution and reporting by

advisors. As noted above, the principle relating to rule-making for regulatory authorities was initially categorized as a Category-Two principle and was later re-categorized as a Category-Three principle.

In September 2006, CAPSA decided to cease any further work on the contentious model law principles. CAPSA members agreed that, based on the strong differences in stakeholder views, it would be difficult to achieve consensus among stakeholders on these principles.

Stakeholder feedback on these principles, received during the consultation process, can be viewed on the CAPSA public website at www.capsa-acor.org.

Conclusion of CAPSA's Work on the Model Law:

CAPSA has now concluded its work on the model law initiative and is publicly releasing its final report. The report includes the following elements:

- 1) CAPSA Non-Contentious Principles for Common Pension Standards (Category-One Principles).
- 2) Recommendations for Model Regulations related to the Non-Contentious Principles for Common Pension Standards.
- 3) Papers on the following Category-Two Principles: phased retirement, simplified pension plans, flexible pension plans and member location.

The members of CAPSA have shared this report with their respective governments so that they can consider these principles when making legislative or regulatory amendments in their jurisdictions.

This report represents over 70 percent of the model law principles that were released in 2004 and, although this report represents the conclusion of CAPSA's work on the model law initiative, CAPSA recognizes that the regulatory environment for pension plans is constantly changing and is committed to examining new regulatory issues as they arise. In addition, CAPSA intends to continue its support for initiatives aimed at the harmonization of pension regulation in Canada.

Part II:

Non-Contentious Principles for Common Pension Standards (Category-One Principles)

Introduction:

This document contains the principles for common pension standards that were categorized as non-contentious (category-one principles), based on feedback received from stakeholder in CAPSA's 2004 consultation on *Regulatory Principles for a Model Pension Law*.

Definitions:

<i>additional voluntary contributions</i>	voluntary contributions made by a member with no obligation on the employer to contribute, and that are different from optional ancillary contributions.
<i>adoption of an amendment</i>	an amendment is considered adopted when it has received the final level of approval in accordance with the terms of the pension plan.
<i>benefit</i>	includes a pension benefit, ancillary benefit and any other benefit payable under the terms of a pension plan.
<i>bridging benefit</i>	a periodic payment provided under a plan to a retired member of a plan for a temporary period of time after retirement for the purpose of supplementing the retired member's pension benefit until the retired member is eligible to receive benefits under the Old Age Security Act or is eligible for or commences to receive retirement benefits under the Canada Pension Plan/Québec Pension Plan.
<i>commuted value</i>	in relation to benefits that a person has a present or future entitlement to receive: under a defined benefit provision, the actuarial present value of those benefits determined, as of the time in question, (a) on the basis of actuarial assumptions and methods that are adequate and appropriate and in accordance with generally accepted actuarial principles; and (b) in accordance with the conditions, if any, that are prescribed; or (c) in a manner that is acceptable to the regulatory authority; or the money representing that value; or under a defined contribution provision, a locked-in retirement account or a retirement income arrangement, the money representing the value of the person's account as of the time in question.
<i>continuous</i>	in relation to employment, membership or service, means including periods of temporary suspension of employment, membership or service, and including periods of lay-off from employment.
<i>deferred pension</i>	a pension benefit, payment of which is deferred until the person entitled to the pension benefit reaches the normal retirement age under the pension plan.
<i>defined benefit</i>	a pension benefit under which a set amount or percentage of member's remuneration is paid as a pension, or that is not a defined contribution benefit.

<i>defined benefit provision</i>	the terms of a pension plan under which a set amount or percentage of member's remuneration is paid as a pension, or any other provision that is not a defined contribution provision.
<i>defined contribution benefit</i>	A pension benefit determined solely by contributions and interest.
<i>defined contribution provision</i>	the terms of a pension plan under which the pension benefit is determined solely by contributions and interest.
<i>employee</i>	an individual employed to do work or provide a service, who is in receipt of or entitled to remuneration for the work or service.
<i>employer</i>	in relation to a member of a pension plan, means the person or organization, whether incorporated or unincorporated, from which the member receives or received remuneration in respect of which benefits under the pension plan are provided.
<i>flexible pension plan provision</i>	the terms of a pension plan under which an ancillary benefit is provided by optional ancillary contributions made by the member.
<i>full-time basis</i>	in relation to an employee of a particular class of employment, means engaged to work, throughout the year, all or substantially all of the normally scheduled hours of work established for persons in that class of employment.
<i>fundholder</i>	a person or combination of persons, as prescribed, who hold the pension fund of a pension plan.
<i>interest</i>	in respect of a defined contribution provision, means interest, gains and losses credited to employer and member contributions calculated in the prescribed manner. in respect of optional ancillary contributions, means interest, gains and losses credited to member contributions calculated in the prescribed manner.
<i>joint and survivor pension benefit</i>	a pension benefit that continues until the later of the death of the member and the spouse of the member.
<i>jointly sponsored pension plan</i>	a defined benefit plan for which the contributions, unfunded liabilities and solvency deficiencies, sharing of surplus assets and decision making functions are shared in a manner agreed to between the participating parties and designated as a jointly sponsored pension plan by the regulatory authority.
<i>member of a pension plan</i>	an employee or former employee who is entitled to benefits under the plan, and includes an employee or former employee for whom the administrator purchased an annuity without the employee or former employee requesting this purchase.

<i>multi-employer pension plan</i>	<p>a pension plan organized and administered for employees of two or more employers who contribute or may be required to contribute to the plan pursuant to an agreement, by-law or statute, where the plan provides pension benefits that are determined by periods of employment with any or all of the employers, but does not include a pension plan where 95 per cent of the members are employed by employers who:</p> <ul style="list-style-type: none"> ▶ are affiliates within the meaning of the Business Corporations Act; or, ▶ if one or more of such employers are not business corporations, are directly or indirectly controlled by the same person.
<i>negotiated cost plan</i>	a pension plan, including a multi-employer pension plan, where an employer's financial contribution to the plan is limited to the amount the employer is contractually required under an agreement to contribute to the plan.
<i>optional ancillary contributions</i>	contributions made by a member to a pension plan, for conversion to optional ancillary benefits, that are in addition to those contributions required to obtain a pension, including interest on those contributions.
<i>other plan beneficiaries</i>	persons other than members or active members of the plan who have become entitled to a benefit under the pension plan, and excludes an employer which has made or is making contributions to the plan.
<i>pension</i>	a pension benefit in payment.
<i>pension benefit</i>	a lifetime periodic amount, including contractually provided escalated adjustments, payable under the terms of a pension plan.
<i>pension plan</i>	a plan organized and administered to provide pension benefits to or in respect of employees and former employees, and to which the employer is required under or in accordance with the terms of the pension plan to contribute, and does not include a prescribed arrangement.
<i>pension fund</i>	the fund maintained to provide benefits under or related to a pension plan
<i>plan for connected persons</i>	a plan that is primarily for the benefit of connected persons as defined in the <i>Income Tax Act</i> , Canada.
<i>plan termination</i>	the cessation of the plan, including the cessation of contributions and of benefit accrual
<i>prescribed</i>	prescribed in regulations to the Act
<i>regulatory authority</i>	the individual or body having the control and supervision of the administration of the pension legislation of that jurisdiction.
<i>retirement date</i>	the date on which the retirement of the member becomes effective for the purposes of the pension plan.

spouse

in relation to another person, (a) a person who, at the relevant time, was married to that other person and had not been living separate and apart from that other person; or (b) if there is no person to whom clause (a) applies, a person who has lived with that other person in a conjugal relationship for at least one year. *Because the definition of “spouse” is dependent on other legislation, this definition may vary across jurisdictions.*

wind up

the distribution of all assets following plan termination

1. Minimum Standards

- ▶ A pension standard in the Act is a minimum requirement only. A pension plan may contain provisions that are more advantageous to members or other plan beneficiaries than those provided under the Act.
- ▶ No person shall contract out of or waive a pension standard under the Act except as provided for under the Act.

2. Application of the Act

- ▶ The Act applies to every pension plan that is provided for persons employed in the jurisdiction of enactment.
- ▶ A person who works in Canada is deemed to be employed in the province in which the establishment of the employer is located, and to which the person is required to report to work. A person who is not required to report to work at an establishment of the employer is deemed to be employed in the province in which the establishment of the employer is located from which the person's remuneration is paid.
- ▶ A person who works outside of Canada is deemed to be employed in the jurisdiction in which he or she last accrued benefits before leaving Canada
- ▶ A person employed in a territory of Canada or a federally regulated industry is deemed to be employed in the federal jurisdiction.
- ▶ A pension plan shall be registered with the regulatory authority of the jurisdiction in which the plurality of members is employed.
- ▶ The regulatory authority of the jurisdiction where a pension plan is registered is authorized to administer the Act in respect of members to whom the Act applies, and that regulatory authority shall assume the powers and functions of the regulatory authority under the Act.
- ▶ Members who have accrued benefits while employed in two or more jurisdictions in Canada shall, upon their termination of employment, retirement or death, have their benefits calculated in accordance with the laws of the jurisdiction in which they last accrued benefits.

3. Registration of Pension Plans

- ▶ The administrator is responsible for ensuring the pension plan complies with all applicable pension legislation.
- ▶ A pension plan must be registered with the regulatory authority. Registration of a plan by the regulatory authority is not proof of compliance with all applicable pension legislation.
- ▶ The administrator of a pension plan must file an application for registration of the plan in a form approved by the regulatory authority (including certification of compliance) and the prescribed pension plan documents with the regulatory authority within the prescribed period of time.
- ▶ The documents that create and support a pension plan shall contain the prescribed provisions. Where the documents that create and support a pension plan do not contain a pension standard required under the Act, the pension plan is deemed to provide for the pension standard.
- ▶ The regulatory authority may refuse to register a plan, revoke the registration of a plan or terminate a plan, for non-compliance with the Act or regulation.

4. Plan Amendments

- ▶ The administrator must file an amendment to the plan or the prescribed plan documents, along with any other required information (including certification of compliance), with the regulatory authority within the prescribed period of time after the adoption of an amendment.
- ▶ The administrator of a pension plan may administer an amended plan unless the plan, as amended, does not comply with the legislation.
- ▶ The filing of an amendment with the regulatory authority is not proof of compliance with all applicable pension legislation.
- ▶ Except where an amendment reduces a benefit, an amendment may be made effective from a date before it is filed.
- ▶ An amendment is void if it would reduce the amount or commuted value of:
 - a deferred or immediate pension;
 - pension benefits accrued with respect to employment before the effective date of the amendment; or,
 - ancillary benefits for which a member has met all eligibility requirements.
- ▶ However, such an amendment is not void if it:
 - is necessary under the *Income Tax Act* (Canada), or pension legislation;
 - is necessary in order to ensure that a negotiated cost plan meets the prescribed funding requirements, the plan permits such an amendment, the prescribed requirements are satisfied and the regulatory authority provides written approval; or,
 - has been consented to by the affected members and affected beneficiaries of a jointly-sponsored pension plan or plan for connected persons, the prescribed requirements are satisfied, and the regulatory authority provides written approval.

- ▶ The administrator must provide notice of the adoption of an amendment affecting rights and benefits or obligations, to all affected members, affected beneficiaries and any collective bargaining agent representing members within the prescribed period of time, containing the prescribed information.

5. Plan Administrators

- ▶ Every pension plan must have an administrator.

6. Plan Administrators' Duties

- ▶ The administrator shall administer the plan and the pension fund in accordance with the Act, regulation and the terms of the pension plan.
- ▶ An employer shall provide the administrator with any information that is required by the administrator to comply with the Act, regulation or the terms of the plan.
- ▶ The administrator of a pension plan:
 - stands in a fiduciary relationship to members and other plan beneficiaries;
 - shall act honestly, in good faith, and in the best interests of the members and other plan beneficiaries; and,
 - shall exercise the degree of care, diligence and skill that a person of ordinary prudence would exercise in dealing with the property of another person.
- ▶ Any person involved in the administration of a pension plan or fund shall employ all relevant knowledge and skill that the person possesses or ought to possess by reason of the person's business or profession.
- ▶ Individuals who act as administrator are required to acquaint themselves with all aspects of their fiduciary duties and obligations.
- ▶ The individual(s) who act(s) as administrator shall (collectively) possess the skills, capability and dedication necessary to fulfill their responsibilities. Where appropriate, the administrator shall seek information and advice from qualified external advisors.
- ▶ The administrator of a pension plan shall establish a pension fund for the purpose of holding assets of the pension plan.
- ▶ The pension fund is held in trust for the benefit of members and other plan beneficiaries.
- ▶ The administrator of a pension plan shall invest the assets of the pension fund of the plan:
 - in accordance with the Act, regulation and the statement of investment policies and procedures (SIP&P);
 - in the manner that a reasonable and prudent person would invest a portfolio of investments made on behalf of another person to whom a fiduciary duty is owed; and,
 - in such a manner to satisfy the pension promise.
- ▶ The administrator shall establish rules and procedures for addressing conflicts of

interest.

- ▶ Any conflict of interest shall be declared to the administrator, and shall be addressed in accordance with the administrator's rules and procedures.
- ▶ The administrator may employ or retain a person to carry out aspects of the administration of the plan where it is reasonable and prudent to do so, including any professional or other advisor retained by the administrator to prepare filings or provide advice in respect of the pension plan or fund.
- ▶ The administrator shall be accountable for the proper selection and supervision of any such person employed or retained to carry out aspects of the administration of the plan.
- ▶ A person employed or retained by the administrator to carry out aspects of the administration of the plan shall, in the performance of their duties respecting the plan or fund, be held to the same standard of care as is the administrator.
- ▶ A person employed or retained by the administrator to carry out aspects of the administration of the plan, may not delegate their duties, or responsibility for their duties respecting the plan or fund to another person without the prior authorization of the administrator.

7. Plan Records

- ▶ Records respecting a pension plan which are in the possession or custody of the administrator, employer or any other person shall be retained for the period of time deemed necessary by the administrator, and in any event, shall be retained for the prescribed period of time.
- ▶ On written request of the administrator, a person with possession or custody of any information necessary for the administration of the plan shall provide the information to the administrator. If the person to whom the request is directed does not provide the information requested within the specified time, the administrator may apply to the [appellate body in the jurisdiction] for an order compelling the provision of the information.

8. Funding of Pension Plans

- ▶ The employer must make contributions to the pension fund of a pension plan sufficient to pay for all of the benefits payable under the plan, in the prescribed manner and within the prescribed period of time, and in accordance with the prescribed funding and solvency requirements.
- ▶ The employer must make contributions to the pension fund of a pension plan with a defined benefit provision in accordance with the most recent actuarial valuation report respecting the plan filed by the plan administrator with the regulatory authority.
- ▶ If the regulatory authority is of the opinion that an actuarial valuation report does not meet the prescribed requirements, the regulatory authority shall notify the administrator of the plan and direct the administrator to file an amended actuarial valuation report which complies with the prescribed requirements.

- ▶ The employer may take a contribution holiday in accordance with the terms of the pension plan and the prescribed requirements.
- ▶ The administrator of a pension plan shall ensure that all required contributions are paid into the pension fund within the prescribed time. Except where the administrator is a pension committee or a board of trustees of a multi-employer pension plan, the administrator will provide the fundholder with an annual summary of contributions within the prescribed time, which sets out the estimated amounts to be remitted, and the expected date of the remittance. Where actual contributions remitted to the fund vary from the amounts in the summary of contributions and no satisfactory explanation is provided for the variation, the fundholder is required to notify the regulatory authority of the variation in contributions within the prescribed time.

9. Investments

- ▶ The administrator must prepare a statement of investment policies and procedures (SIP&P) for the plan that contains the prescribed information, and provide the SIP&P to any persons or entities that require the SIP&P in order to fulfil their duties and responsibilities to the plan, including but not limited to the prescribed persons or entities.

Note: The time period for preparing the SIP&P is detailed in Schedule 3 of the regulations to the federal *Pension Benefits Standards Act*.

- ▶ The investments of the pension fund of a pension plan shall be held in the name of the plan, or in the name of a fundholder under a trust agreement, insurance contract or other prescribed funding arrangement.
- ▶ A pension plan may provide that investment decisions may be made by a member with respect to the following plan assets:
 - contributions under a defined contribution provision made by a member or an employer;
 - optional ancillary contributions made by a member under a flexible pension plan provision; and,
 - additional voluntary contributions made by a member.

10. Interest credits

- ▶ Contributions to, contributions owing to or amounts payable from a pension fund shall be credited with interest as prescribed.

11. Pension Fund Assets

- ▶ Contributions which have been deducted from members' remuneration, or contributions received by the administrator from employers in a multi-employer pension plan, must be remitted within the prescribed period of time to the pension fund. Such contributions are deemed to be held in trust for members and other plan beneficiaries.

- ▶ Employer contributions due and owing to a pension fund must be held separate and apart from the assets of the employer. Such contributions are deemed to be held in trust for members and other plan beneficiaries.
- ▶ The administrator has a lien and charge on the assets of the employer in an amount equal to the amounts deemed to be held in trust.
- ▶ The above principles also apply in respect of money to be paid to an insurance company that guarantees benefits under a pension plan.
- ▶ Where contributions are not paid when due, the administrator shall take immediate action to obtain payment of such contributions, and may commence proceedings in a court of competent jurisdiction to obtain payment of contributions due under the pension plan, the Act or the regulation.

12. Provision of Information

- ▶ The administrator of a pension plan shall file the following with the regulatory authority in the form required by the regulatory authority:
 - an information return;
 - if the pension plan provides defined benefits, actuarial information;
 - financial information, including audited financial statements of the pension fund as prescribed; and,
 - any other information required under the Act or regulation.
- ▶ Unless authorized by the regulatory authority in writing, any information required to be filed with the regulatory authority shall be filed within the prescribed period of time.
- ▶ Actuarial information required under the Act or regulation shall be prepared by a Fellow of the Canadian Institute of Actuaries (FCIA) in accordance with the Act, regulation and accepted actuarial practices.
- ▶ Audited financial statements required under the Act or regulation shall be prepared in accordance with the Act, regulation and generally accepted accounting principles.
- ▶ The administrator of a pension plan shall provide within the prescribed times:
 - a summary of the pension plan to each active member of the plan and any other person who is entitled to join the plan;
 - an annual statement containing the prescribed information to each active member of the plan; and
 - any other prescribed information to the members and other plan beneficiaries.
- ▶ The following individuals are entitled to inspect prescribed plan information:
 - a member;
 - the spouse of a member;
 - any other plan beneficiary;
 - an employer;
 - any person required to make contributions on an employer's behalf;
 - an agent of a member, the spouse of a member, any other plan beneficiary or an employer;

- a representative of a collective bargaining agent that represents members of the plan; or,
 - a prescribed person.
- ▶ Upon written request, individuals who are entitled to inspect prescribed plan information may (i) inspect the prescribed plan information held by the administrator once per calendar year without charge at a place agreed upon by the individual and the administrator; or, (ii) request copies of prescribed plan information held by the administrator once per calendar year for a reasonable fee that may be waived.
- ▶ The plan administrator will provide within the prescribed times an individual statement containing the prescribed information to:
 - any plan member who terminates employment;
 - any plan member who ceases to be an active member of the pension plan;
 - any plan member who retires;
 - any person entitled to death benefits upon the death of the member;
 - all members and other plan beneficiaries upon the approval of the wind up of the pension plan by the regulatory authority; or,
 - the spouse or former spouse of a member who has an entitlement to benefits that arose from the breakdown of a spousal relationship.
- ▶ Where the plan administrator provides an individual statement to a member or other plan beneficiary under [the above principle], the member or other beneficiary has a prescribed period of time to make their election and advise the plan administrator of their election.
- ▶ Where the plan administrator has been advised of a benefit election under [the above principle], the administrator shall complete the settlement of the transaction within the prescribed times.

13. Eligibility for Membership

- ▶ A pension plan must identify one or more prescribed classes of employees eligible to be members of the pension plan.
- ▶ If an employee who belongs to a class of employees eligible to be members of the pension plan satisfies the eligibility criteria for a full-time employee or a less than full-time employee, the employee is entitled to become a member on the first day of the month after the employee has 24 months of continuous service with an employer, or one or more employers in a multi-employer pension plan, and on the first day of each plan fiscal year thereafter.
- ▶ A full-time employee is eligible after he or she has completed the minimum period of continuous employment specified by the plan for that class, which cannot exceed 24 months of continuous service with one or more participating employers.
- ▶ A less than full-time employee is eligible after he or she has
 - (A.) completed the minimum period of continuous service with one or more participating employers specified by the plan for that class, which cannot exceed twenty four months; and
 - (B.) satisfied a further condition specified by the plan, which must be one of the following:

1. The employee has completed, in each of two consecutive calendar years, not less than the minimum number of hours of work specified in the plan, which cannot exceed 700.
 2. The employee has earned in each of two consecutive calendar years, not less than the percentage of the YMPE, which cannot exceed 35%.
 3. The employee has
 - (I) completed, in each of two consecutive calendar years, not less than the number of hours of work, which cannot exceed 700, or
 - (II) earned in each of two consecutive calendar years, not less than the percentage of the YMPE, which cannot exceed 35%.
- ▶ An active member of a pension plan who is employed continuously does not cease to be an active member by reason only of failing to satisfy the eligibility criteria specified by the plan in any year.
 - ▶ A pension plan may provide for mandatory membership in the plan as a condition of employment. Membership may be mandatory for full-time employees and voluntary for less than full-time employees.
 - ▶ Separate pension plans may be established for full-time and less than full-time employees of a prescribed class, if the plans are comparable, taking into account differences in number of hours worked by members:
 - respecting a defined benefit provision, in terms of the value of the benefits provided; and,
 - respecting a defined contribution provision, in terms of the rate or amount of contributions.
 - ▶ For the purposes of the Act or regulation, a member of a pension plan is deemed to be an active member of the plan:
 - until he or she ceases to be a member in accordance with membership withdrawal requirements of the plan, or is no longer a member of a class covered by the plan;
 - until his or her period of continuous employment terminates; or,
 - until he or she dies.
 - ▶ If an annuity is purchased at the request of a member in respect of the member's entitlement on termination of membership, the member ceases to be a member of the pension plan.

14. Benefits

- ▶ A pension plan must provide for the payment of a pension benefit. Notwithstanding, in the case of a defined contribution provision a pension plan may provide for the payment of a prescribed periodic income.
- ▶ A pension plan must provide for formulas, complying with the prescribed criteria, for determining benefits, member and employer contributions and for allocating contributions.
- ▶ A pension plan may provide for the following ancillary benefits:
 - disability benefits;
 - bridging benefits;

- supplementary benefits, other than bridging benefits, payable for a temporary period of time;
 - pre-retirement death benefits in excess of those required by the Act or regulation;
 - early retirement benefits in excess of those required by the Act or regulation;
 - joint and survivor pension benefits in excess of those required by the Act or regulation;
 - postponed retirement benefits in excess of those required by the Act or regulation; and
 - any prescribed ancillary benefit.
- ▶ The terms of a pension plan must allow a person to determine a member's pension benefit under the plan.
 - ▶ An ancillary benefit to which a member has become fully entitled by meeting all the eligibility requirements under the plan shall be included in the calculation of the member's benefit.
 - ▶ The administrator may purchase an annuity for a member in respect of the pension or deferred pension to which the member is entitled under the pension plan.

15. Vesting of Benefits

- ▶ For the purposes of the Act and Regulations, a benefit vests in a member when the member acquires an unconditional entitlement under the terms of the pension plan to receive the benefit, immediately or at a future date.
- ▶ Immediate vesting of pension benefits shall be applied retroactively for all active members' service.

16. Entitlement to Pension Benefit

- ▶ All plans must specify a normal retirement age.
- ▶ At normal retirement age all members must be eligible to commence a pension under the plan without reduction or increase.
- ▶ The maximum normal retirement age shall be no later than the first day of the month following the month in which the member is entitled to unreduced benefits under the *Canada Pension Plan* or *Québec Pension Plan*.
- ▶ A member is eligible to retire on any date within 10 years prior to the normal retirement age.
- ▶ A pension paid before a member attains normal retirement age may be reduced, but may not be less than the actuarial equivalent of the pension payable at normal retirement age.
- ▶ With respect to the pension payable under a defined benefit provision of a pension plan upon retirement of a member who continues to be employed after attaining normal retirement age, the pension plan shall pay a pension that is equal to either:
 - the pension payable as a result of the continued accrual of the member's pension benefits after attaining normal retirement age; or

- the pension that would have been payable upon the member attaining normal retirement age, actuarially increased to account for the member's continued employment after attaining normal retirement age;

as provided for by the pension plan for all members in such a situation.

- ▶ A pension plan may provide for the reduction of the member's pension benefit to reflect benefits that may be payable under the Canada Pension Plan or Québec Pension Plan, as prescribed. If such a reduction is made, no further reduction may be made to reflect subsequent changes in the benefits payable to the member under the *Canada Pension Plan* or *Québec Pension Plan*.
- ▶ If a plan permits and a member so elects, a member's pension may be varied as prescribed to account for the benefits payable to the member under the *Old Age Security Act*.

17. 50 per cent Rule

- ▶ A member will not fund more than 50 per cent of the commuted value of defined benefits accrued by the member respecting periods of contributory service, as determined at the retirement or death of the member, the termination of membership or the conversion of the member's defined benefits to defined contribution benefits.
- ▶ The 50 per cent rule does not apply with respect to a member's:
 - additional voluntary contributions;
 - optional ancillary contributions; and,
 - contributions made to purchase past-service benefits and any benefits resulting from such contributions.
- ▶ Where the application of the 50 per cent rule results in excess contributions by a member of a pension plan, the member may elect to have the excess contributions paid to the member as a lump sum, directly transferred to the member's RRSP or RRIF if permitted under the *Income Tax Act* (Canada), or where the plan permits, purchase additional pension from the plan.

18. Joint and Survivor Pension Benefit

- ▶ The pension benefit paid to a retired member of a pension plan who has a spouse at his or her retirement date shall be paid as a joint and survivor pension benefit.
- ▶ The joint and survivor pension benefit payable to the spouse of a member shall not be less than 60 per cent of the pension benefit that was payable to the member before the member's death.
- ▶ In order to provide a joint and survivor pension benefit, the pension benefit that would be otherwise payable to the member may be reduced, provided that the commuted value of the pension benefit is not less than the commuted value of the pension benefit that would be otherwise payable to the member.
- ▶ The spouse of a member may waive his or her entitlement to a joint and survivor pension benefit by providing a waiver, in a form acceptable to the regulatory authority, to the plan administrator within the prescribed period of the time before

payment of the member's pension benefit commences.

- ▶ The pension benefit paid to a retired member of a pension plan who has a spouse at his or her retirement date need not be paid as a joint and survivor pension benefit if:
 - the spouse of the member has waived his or her entitlement to a joint and survivor pension benefit; or,
 - the retired member and his or her spouse have legally separated in accordance with applicable family law legislation, or there has been a division of the pension benefits payable to the member in accordance with the applicable family law legislation.

19. Pre-Retirement Death Benefit

- ▶ If a member of a pension plan dies before payment of the member's pension benefit commences and the member has a spouse on the date of death, the spouse will receive no less than the commuted value of the member's pension benefit determined on the date of the member's death as if the member had terminated employment.
- ▶ The spouse is entitled to elect to:
 - transfer the amount to a RRSP or RRIF;
 - receive a pension or a deferred pension;
 - transfer funds to an insurance company for the purchase of a life annuity; or,
 - receive a lump sum payment.
- ▶ If the spouse does not provide his or her election within the prescribed time, the spouse will be deemed to have elected a lump sum payment.
- ▶ A pension benefit payable to the surviving spouse of a deceased member shall not terminate by reason only of the remarriage of the surviving spouse.
- ▶ If a member of a pension plan dies before payment of the member's pension benefit commences and, on the date of death, the member does not have a spouse, a beneficiary designated in the manner required under the pension plan is entitled to receive a lump sum payment equal to the commuted value of the member's pension benefit, determined as if the member had terminated employment on the date of the member's death.
- ▶ If a member of a pension plan dies before payment of the member's pension benefit commences and, on the date of death, the member does not have a spouse or a beneficiary designated in the manner required under the pension plan, the member's estate is entitled to receive a lump sum payment equal to the commuted value of the member's pension benefit, determined as if the member had terminated employment on the date of the member's death.
- ▶ The spouse, designated beneficiary or the member's estate has the same entitlement as the member with respect to the application of the 50 per cent rule.
- ▶ A spouse may, before the death of a member, waive entitlement to the statutory pre-retirement death benefit in a form containing the prescribed information.
- ▶ A spouse may, before the death of a member, revoke such waiver in a form containing the prescribed information.

- ▶ The administrator shall, within 30 days after the revocation of a waiver made under [the preceding bullet], provide written notice of the revocation to the member.
- ▶ The amount that may be transferred from the pension plan is subject to a limit based on the solvency of the plan and determined in the prescribed manner.

20. Portability of Pension Benefits

- ▶ A defined contribution provision member who ceases to be an active member has the right to transfer defined contribution benefits from the plan.
- ▶ A plan may provide that the member whose continuous employment is terminated must make the transfer referred to in [the preceding bullet], as prescribed.
- ▶ A plan may permit a defined benefit provision member, who ceases to be an active member, to transfer a commuted value from the plan.
- ▶ A member who terminates membership has the right to transfer money from the plan. A plan with Defined Benefit provisions may restrict portability with respect to those benefits for members within 10 years of Normal Retirement age.
- ▶ A member may transfer a commuted value from a pension plan:
 - to the pension fund of another pension plan if the other plan permits;
 - to a prescribed retirement savings arrangement; or,
 - for the purchase of an immediate or deferred annuity.
- ▶ A member of a pension plan who ceases to be an active member and does not elect to transfer benefits out of the plan is entitled to receive an immediate or deferred pension. A plan **may** permit a member who has elected a deferred pension to transfer the funds at a later date.
- ▶ The amount that may be transferred from the pension plan is subject to a limit, based on the solvency of the plan and determined in the prescribed manner.

21. Locking-In

- ▶ Money in a pension plan is locked-in while it is in the plan.
- ▶ Any amounts transferred from the plan on plan termination or termination of active membership must be locked-in to provide a pension on retirement.
- ▶ The requirement that amounts transferred from the plan on plan termination or termination of active membership must be locked-in to provide a pension on retirement does not apply to prescribed amounts.
- ▶ Any transfer of funds from a plan, which does not comply with the requirement that amounts transferred from the plan on plan termination or termination of active membership must be locked-in to provide a pension on retirement or that is not a prescribed amount, is void.

22. Pension Funds Exempt from Execution, Seizure

- ▶ Monies in a pension plan or a prescribed retirement savings arrangement cannot be assigned, charged, alienated or anticipated, and are exempt from execution, seizure or attachment.

23. Appointment of Plan Administrator

- ▶ The regulatory authority may appoint itself or any other person to be the administrator of a pension plan if, in the opinion of the regulatory authority, it is in the best interests of the members and other plan beneficiaries and:
 - the pension plan or the administration of the plan, in the opinion of the regulatory authority, does not comply with the Act or regulation;
 - the administrator is unable to act or fails to act;
 - the pension plan does not have an administrator; or,
 - the employer is insolvent.
- ▶ The appointment of an administrator by a regulatory authority supersedes and extinguishes the appointment of the previous administrator. The regulatory authority may rescind the appointment of the administrator of a pension plan at any time.
- ▶ If the regulatory authority appoints an administrator for a pension plan, the regulatory authority shall give notice of the appointment to:
 - the former administrator, if any;
 - the employer;
 - the fund holder(s)
 - each collective bargaining agent that represents members of the plan; and,
 - any other persons specified by the regulatory authority.
- ▶ Subject to any terms or conditions imposed on the administrator's appointment by the regulatory authority, an administrator appointed by the regulatory authority has all of the powers and duties conferred upon an administrator under the Act, regulation or the pension plan, and the appointed administrator shall also have the power to amend the terms of the plan.
- ▶ The fees and expenses incurred by the appointed administrator shall be paid in accordance with the Plan terms or, in the absence of any such direction, paid from the pension fund. If the employer is the payor under the Plan terms and the employer is insolvent, fees and expenses incurred by the appointed administrator shall be paid from the pension fund with the approval of the regulatory authority.

24. Powers of the Regulatory Authority

- ▶ The regulatory authority is charged with the administration and enforcement of the Act and regulation, and has the powers conferred by the Act and regulation.
- ▶ The regulatory authority may:
 - collect any information necessary to determine compliance with the Act, regulation and terms of the pension plan;

- conduct studies, surveys and research programs and compile statistical and other information relating to pension plans and their operation; and,
 - disclose any information gathered by the regulatory authority or filed with the regulatory authority under the Act to any government agency or regulatory body, subject to the applicable freedom of information legislation and confidentiality provisions applicable to individual pension information.
- ▶ The regulatory authority may delegate, in writing, any of its powers or duties under the Act or regulation to any person, subject to any limitation or condition set out in the delegation.
- ▶ The regulatory authority may on receipt of a written request, and by written notice to the applicant, extend any procedural time limit as prescribed. Extensions may be subject to such conditions as the regulatory authority deems appropriate.
- ▶ The regulatory authority has the power to:
 - remove an administrator;
 - appoint and rescind the appointment of an administrator;
 - make rules;
 - make policies;
 - require the administrator to hold a meeting as specified by the regulatory authority (e.g., within the specified time, inviting the attendance of members or other plan beneficiaries, or requiring the attendance of agents of the plan administrator);
 - require the payment of fees in relation to any matter under the Act or regulation, and may set the amount of those fees; and,
 - assess all regulated persons with respect to all expenditures incurred or to be incurred in a specified period by the regulatory authority in connection with regulatory activities in respect of the regulated persons that are authorized or undertaken under the Act or regulation.

25. Inspections

- ▶ The regulatory authority or any person authorized in writing by the regulatory authority has certain enumerated inspection powers. Such inspection powers may be exercised for any purpose relating to the administration or enforcement of the Act or regulation.
- ▶ Any information, regardless of its physical form, characteristics or location, that relates to a pension plan, pension fund or to any securities, obligations or other investments in which a pension fund are invested, may be inspected.
- ▶ During an inspection:
 - the regulatory authority or any person authorized in writing by the regulatory authority shall provide identification;
 - the administrator, employer, or any representative, agent, officer or employee of the administrator or employer, shall provide reasonable assistance during the inspection;
 - the regulatory authority or person authorized by the regulatory authority may take copies of the information or remove the information for the purpose of copying, provided that the original information is returned within a reasonable

- period of time;
 - the regulatory authority or person authorized by the regulatory authority may enter any business premises and, with the consent of the occupier, any private dwelling for the purpose of accessing information to be inspected; and,
 - if the regulatory authority or person authorized by the regulatory authority is refused entry to any premises, is hindered or obstructed in inspecting information or a person refuses to produce the information to be inspected, the regulatory authority may apply to the appropriate court for an inspection order or warrant.
- ▶ Information copied by the regulatory authority or a person authorized by the regulatory authority during an inspection is admissible as evidence in any proceeding in which the original information would be admissible.
- ▶ The regulatory authority or any person authorized by the regulatory authority may require the production of any information the regulatory authority deems necessary to ensure compliance with the Act, regulation, or a decision, order or direction of compliance made under the Act. If the regulatory authority requires the production of such information, the regulatory authority shall give written notice which identifies the information required to be produced and the period of time in which to comply with the request.
- ▶ The regulatory authority may order any person or the pension fund to pay all or part of the cost of an inspection, or all or part of the cost of any opinion, report or professional attestation in respect of the inspection, if the regulatory authority considers it to be reasonable and fair in the circumstances to do so.

26. Rules

- ▶ The regulatory authority may make rules governing matters under the Act or regulation, which are of a technical or administrative nature. A rule shall have the force and effect of a regulation made under the Act.
- ▶ The regulatory authority shall publish notice of every rule that it proposes to make, and interested persons may make representations about the proposed rule within the prescribed period of time.
- ▶ Once the consultation phase is complete and the regulatory authority is prepared to proceed with the proposed rule, a copy of the proposed rule will be provided to the Minister responsible for the Act. The Minister may approve or reject the rule, or return it to the regulatory authority for further consideration.

27. Policies

- ▶ The regulatory authority may adopt any policy regarding interpretations of the Act or regulation.

28. Agreements with Other Jurisdictions

- ▶ The regulatory authority may, subject to the approval of the Lieutenant Governor in

Council/Governor in Council:

- enter into agreements with the authorized representatives of another jurisdiction to provide for the reciprocal application and enforcement of pension benefits legislation, the reciprocal registration, audit and inspection of pension plans and for the establishment of the Canadian Association of Pension Supervisory Authorities;
- enter into agreements with the authorized representatives of another jurisdiction to provide for the application of this Act or the pension benefits legislation of another jurisdiction to pension plans with members employed in more than one jurisdiction;
- enter into agreements with the authorized representatives of another jurisdiction to provide for the application of provisions contained in such agreements which are not contained in this Act or the pension benefits legislation of another jurisdiction to pension plans with members employed in more than one jurisdiction;
- authorize the Canadian Association of Pension Supervisory Authorities to carry out such duties on behalf of the regulatory authority as the regulatory authority may require; and,
- delegate to the regulatory authority or government of another jurisdiction such functions and powers under the Act as the regulatory authority may determine, and the regulatory authority may accept similar delegations of functions and powers from the regulatory authority or government of another jurisdiction.

Note: Authority will be required to provide for adoption of a revised/new reciprocal agreement

29. Directions of Compliance

- ▶ If, in the opinion of the regulatory authority, a pension plan does not comply with the requirements of the Act or regulation, is not being administered in accordance with the Act, regulation or the terms of a pension plan, or is being administered contrary to safe and sound financial or business practices, the regulatory authority may direct the plan administrator, employer or any other person to:
 - cease or refrain from committing the act or pursuing the course of conduct; and,
 - perform such acts as in the opinion of the regulatory authority are necessary to remedy the situation.
- ▶ If a person fails to comply with a decision, order or direction of compliance of the regulatory authority, the regulatory authority may order the wind up of the pension plan to which the decision, order or direction of compliance relates after the prescribed period of time after the end of the period of time specified in the decision, order or direction of compliance. If the regulatory authority orders the wind up of the plan, the regulatory authority must give notice of the order to the administrator of the plan.
- ▶ Any decision, order or direction of compliance issued by the regulatory authority shall:
 - include written reasons;
 - be served on the administrator of the pension plan to which the decision, order or direction of compliance relates;
 - specify the period of time within which the decision, order or direction of

- compliance must be complied with; and,
 - state that the person on whom the decision, order or direction of compliance is served may make written representations to the regulatory authority regarding the decision, order or direction of compliance within the prescribed time.
- ▶ If the regulatory authority is of the opinion that delaying the implementation of a decision, order or direction of compliance would prejudice the interests of the members of a pension plan or other plan beneficiaries, the regulatory authority may specify that the decision, order or direction of compliance must be complied with forthwith, notwithstanding a person's right to make representations about the order.

30. *Objections and Appeals*

- ▶ Where the regulatory authority has issued a decision, order or direction of compliance, the person who received the decision, order or direction of compliance may make written representations, including the grounds for the objection and the related facts, to the regulatory authority within the prescribed period of time.
- ▶ The regulatory authority shall, within the prescribed period of time after receiving such representations, respond to the person making the representations, and confirm, vary or revoke the original decision, order or direction of compliance.
- ▶ A person who has received a response from the regulatory authority confirming, varying or revoking a decision, order or direction of compliance of the regulatory authority may appeal the confirmation, variation or revocation of the decision, order or direction of compliance to the [appellate body in the jurisdiction].

31. *Appeals by Regulatory Authority*

- ▶ The regulatory authority may apply to the [appellate body in the jurisdiction] for an order requiring a person to comply with the Act, regulation or the terms of the pension plan, or for an order enforcing a decision, order or direction of compliance of the regulatory authority.

32. *Offences and Punishment*

- ▶ Any person who contravenes the Act, regulation, or a decision, order or direction of compliance made under the Act or regulation is guilty of an offence.
- ▶ Any person who commits an offence is liable on summary conviction to the fines and other penalties as prescribed.
- ▶ If a corporation or unincorporated body commits an offence under the Act, every officer, director, official or agent of the corporation and every person acting in a similar capacity or performing similar functions in the unincorporated body who:
 - caused, directed, authorized, assented to, acquiesced in, participated in or permitted the commission of the offence by the corporation or unincorporated body; or,
 - failed to take all reasonable care in the circumstances to prevent the commission of the offence by the corporation or unincorporated body,
 is guilty of an offence and is liable on summary conviction to the fines and other

penalties as prescribed, whether or not the corporation or unincorporated body has been prosecuted for or convicted of the offence arising from the same facts or circumstances.

- ▶ If an employer, administrator of a pension plan or an agent of either is convicted of an offence, the court may, in addition to imposing the fines and other penalties as prescribed, order the employer, or a director, officer or agent of the employer, to remit to the pension fund all amounts found not to have been remitted, with interest, or the amounts found to have been improperly withdrawn from the pension fund, with interest. The rate of interest shall be equal to the rate of return for the pension fund.
- ▶ The regulatory authority and its staff shall not be personally liable for any action done in good faith in the execution or intended execution of a duty or authority under the Act or regulation, or for any alleged neglect or default in the execution in good faith of a duty or authority under the Act or regulation.
- ▶ A prosecution for an offence may be commenced at any time within, but not later than, two years after the date the regulatory authority first became aware of the subject matter of the offence.
- ▶ In any prosecution for an offence, a certificate signed by the regulatory authority certifying that any document has been filed with the regulatory authority, certifying that any document has not been filed with the regulatory authority as required under the Act or regulation, or certifying the registration status of a pension plan or an amendment to a plan, is admissible as evidence and is proof, in the absence of evidence to the contrary, of the matters so certified.

33. Regulations

- ▶ The Lieutenant Governor in Council/Governor in Council may make regulations relating to specified areas, including any exemption from the Act or regulation.

34. Review of the Act

- ▶ Within five years after the Act comes into force, and within each five-year period following that date, the regulatory authority shall undertake a review of the Act and regulation.

Part III:

Recommendations for Model Regulations Related to CAPSA Non-Contentious Principles for a Model Pension Law

Recommendations for Model Regulations Related to CAPSA Non-Contentious Principles for Common Pension Standards

Principle Number (bullet)	Text from Model Law	Recommendation for Model Regulations
3 (3)	<p>The administrator of a pension plan must file an application for registration of the plan in a form approved by the regulatory authority (including certification of compliance) and the prescribed pension plan documents with the regulatory authority within the prescribed period of time.</p>	<p>The application form should ask for statement regarding establishment of SIP&P and include certification of compliance.</p> <p>Prescribed Pension Plan Documents: certified copies of:</p> <ul style="list-style-type: none"> -documents that create and support the pension plan -documents that create and support the pension fund <p>copies of:</p> <ul style="list-style-type: none"> -a summary of the pension plan provided to employees eligible for membership <p>Actuarial valuation report and cost certificate prepared within 60 days of establishment of plan</p> <p>Prescribed period of time: Application form and prescribed documents must be filed within 60 days of establishment of plan</p>
3(4)	<p>The documents that create and support a pension plan shall contain the prescribed provisions. Where the documents that create and support a pension plan do not contain a pension standard required under the Act, the pension plan is deemed to provide for the pension standard.</p>	<p>Prescribed provisions in documents that create and support the pension plan:</p> <ul style="list-style-type: none"> -the method of appointment, duties and powers of the administrator -the conditions for membership -the benefits and rights that are to accrue upon termination of employment, termination of membership, retirement or death -the normal retirement date -the requirements for entitlement to any pension benefit, ancillary benefit or optional ancillary benefit -the contributions or method of calculating the contributions required -the method of determining benefits payable -the method of calculating interest to be credited to contributions -by whom and how the costs of administration of pension plan and pension fund will be paid

		<ul style="list-style-type: none"> -the mechanism for establishing and maintaining the pension fund -the treatment of surplus during the continuation of the pension plan and on the wind up -the method of allocation of assets on windup -particulars of any predecessor pension plan under which members of the plan may be entitled to pension benefits -the obligation of the administrator to provide members with information and documents required to be disclosed under the Act and the regulations -for a multi-employer pension plan, the documents shall set out the powers and duties of the board of trustees that is the administrator of the multi-employer pension plan -who may amend the plan and how such amendments would be made
4(1)	The administrator must file an amendment to the plan or the prescribed plan documents, along with any other required information (including certification of compliance), with the regulatory authority within the prescribed period of time after the adoption of an amendment.	<p>Prescribed period of time: within 60 days after the date on which the amendment is adopted</p>
4(6)	<p>However, such an amendment is not void if it:</p> <ul style="list-style-type: none"> ▪ is necessary under the <i>Income Tax Act</i> (Canada), or pension legislation; ▪ is necessary in order to ensure that a negotiated cost plan meets the prescribed funding requirements, the plan permits such an amendment, the prescribed requirements are satisfied and the regulatory authority provides written approval; or, ▪ has been consented to by the affected members and affected beneficiaries of a jointly-sponsored pension plan or plan for connected persons, the prescribed requirements 	<p>Administrator must file the following information:</p> <ul style="list-style-type: none"> - An actuarial valuation report that: <ul style="list-style-type: none"> • Provides the financial position and funding requirements before and after the reduction • Demonstrates the ongoing ability of the plan to meet the minimum funding requirements of the Act • Indicates if any of the affected members are subject to other jurisdictions. - Confirmation that all affected members and other persons entitled to benefits pursuant to the plan have been notified of the impact of the reducing amendment and of their right to make representations to the Regulatory authority. - Evidence that the terms of the plan and other plan documents permit the amendment

	are satisfied, and the regulatory authority provides written approval.	
4(7)	The administrator must provide notice of the adoption of an amendment affecting rights and benefits or obligations, to all affected members, affected beneficiaries and any collective bargaining agent representing members within the prescribed period of time, containing the prescribed information.	Prescribed time and information: The administrator of a plan shall, pursuant to subsection 4(7) of the Act and within 60 days after the adoption of an amendment, provide to each member, any collective bargaining agent of the members of the plan, and other persons entitled to benefits pursuant to the plan, a notice containing a summary of the amendment and the address and phone number of the plan administrator
7(1)	Records respecting a pension plan which are in the possession or custody of the administrator, employer or any other person shall be retained for the period of time deemed necessary by the administrator, and in any event, shall be retained for the prescribed period of time.	Prescribed period of time; Records respecting a pension plan which are in the possession or custody of the administrator, employer or any other person (other than the plan member) shall be retained for the longer of (a) the period within which a member or former member may exercise rights under limitations legislation in the jurisdiction of employment , and (b) a period of at least <ul style="list-style-type: none"> ▶ in the case of a record relating to a person entitled to benefits under the pension plan 7 years after the date all rights or entitlements of the person under the pension plan are paid, settled or extinguished; ▶ in the case of any document that creates or supports the pension plan or any predecessor pension plan - 7 years after the later of; <ul style="list-style-type: none"> i) the date upon which the last assets of the pension fund are distributed, and ii) the date upon which the wind up of the pension plan is approved by the regulatory authority; and ▶ in the case of any other record, 7 years after the later of the date of the last transaction to which the record relates or the date when the record ceases to be operative.
8(1)	The employer must make contributions to the pension fund of a pension plan sufficient to pay for all of the benefits payable under the plan, in the prescribed	<ol style="list-style-type: none"> 1. Contributions covering normal costs must be remitted to the plan fund within 30 days from the end of the month to which they apply. 2. Contributions covering unfunded liabilities must be remitted to the plan fund in equal monthly amounts, or as a constant percentage of projected payroll

	<p>manner and within the prescribed period of time, and in accordance with the prescribed funding and solvency requirements.</p>	<p>contingent on an annual evaluation, no later than 30 days after the end of the month to which they apply.</p> <ol style="list-style-type: none"> 3. Contributions covering solvency deficiencies must be remitted to the plan fund in equal monthly amounts, or as a constant percentage of projected payroll contingent on an annual evaluation, no later than 30 days after the end of the month to which they apply. 4. Each unfunded liability and solvency deficiency must be funded separately with an amortization schedule beginning on the date it was established and that schedule, subject to the maximum amortization periods, is maintained for the duration of the time the deficiency exists. 5. All actuarial valuations must include a solvency valuation, including valuations reporting the impact of an amendment that increases solvency liabilities. The solvency position of the plan must be stated – it is not sufficient for the actuary to opine that the solvency ratio is greater than one or that the impact of an amendment will not render the plan less than fully solvent. 6. If a valuation reveals a going-concern actuarial gain or a solvency gain, that gain must be applied to existing deficiencies starting with the earliest established unfunded liability or solvency deficiency, as the case may be. After a valuation discloses a gain, an actuary is permitted to advise either that the special payment levels be maintained, thereby effectively reducing the amortization period, or that the special payment be recalculated such that the original amortization period of the remaining unfunded liability or solvency deficiency is maintained. 7. If amortization of an unfunded liability and solvency deficiency is accelerated by increasing the amount of special payments, making special payments prior to their due date, or adding extra payments, subsequent special payments may be reduced as long as the outstanding balance of the unfunded liability and solvency deficiency is not, at any time, greater than it would have been under the original schedule. 8. Where a plan amendment creates an unfunded liability and/or a solvency deficiency, the unfunded liability or solvency deficiency must be amortized over a period commencing on the effective date of the amendment. This will necessitate the filing of a new or revised valuation, or interim cost certificate,
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		<p>prepared by the actuary.</p> <ol style="list-style-type: none"> 9. For reporting purposes, the valuation report must disclose both a going concern funded ratio and a solvency ratio, determined in the following manner: <ol style="list-style-type: none"> a. Going Concern Funded Ratio = Going Concern Assets divided by the Going Concern Liabilities, determined on the basis of a going concern valuation. b. Solvency Ratio = Market value of assets less a provision for termination expenses, divided by Solvency Liabilities, determined on the basis of a solvency valuation. 10. Actuarial valuations shall be filed on a triennial basis, within 9 months of the date of the actuarial review of the plan. The regulatory authority may, however, require annual valuations in circumstances established by the regulatory authority, to be filed within 9 months of the date of the actuarial review of the plan. The regulatory authority may also require valuations at any time at its discretion. 11. Where a pension plan terminates with a deficit, the employer is required to amortize the deficit within 5 years of the termination. This provision does not apply to NCDB plans. If a participating employer in a multi-unit (multi-employer but not NCDB) plan withdraws from the plan, that employer is responsible for the amortization of any solvency deficiencies relating to that employer's members.
8(5)	<p>... Except where the administrator is a pension committee or a board of trustees of a multi-employer pension plan, the administrator will provide the fundholder with an annual summary of contributions within the prescribed time, which sets out the estimated amounts to be remitted, and the expected date of the remittance. Where actual contributions remitted to the fund vary from the amounts in the</p>	<ol style="list-style-type: none"> 1. The administrator must provide the fundholder with an annual summary within 30 days after the beginning of the fiscal year in question. 2. The fundholder is required to notify the regulatory authority of a variation within 30 days of the date on which the contributions were due.

	<p>summary of contributions and no satisfactory explanation is provided for the variation, the fundholder is required to notify the regulatory authority of the variation in contributions within the prescribed time.</p>	
9(1)	<p>The administrator must prepare a statement of investment policies and procedures (SIP&P) for the plan that contains the prescribed information, and provide the SIP&P to any persons or entities that require the SIP&P in order to fulfil their duties and responsibilities, including but not limited to the prescribed persons or entities.</p>	<p>Prescribed information:</p> <p>A SIP&P must contain a description of the factors that may affect the funding and solvency of the plan and the ability of the plan to meet its financial obligations, and the relationship of those factors to the investment policies and procedures, including the following:</p> <ul style="list-style-type: none"> a) categories of investments and loans, including derivatives, options and futures; b) diversification of the investment portfolio; c) asset mix and rate of return expectations; d) liquidity of investments; e) the lending of cash or securities; f) the retention or delegation of voting rights acquired through investments; g) the method of, and the basis for, the valuation of investments that are not regularly traded at a public exchange; and h) related party transactions permitted under the regulation, and the criteria to be used to establish whether a transaction is nominal or immaterial to the plan. <p>For employer-directed defined contribution pension plans:</p> <ul style="list-style-type: none"> ▪ A SIP&P must contain a description of the risk factors that may affect the value of the assets of the plan as a whole, and the relationship of those factors to the investment policies and procedures, including the following: <ul style="list-style-type: none"> ▪ (a) to (h), as above <p>For member-directed defined contribution pension plans (as defined in the CAP guidelines):</p> <ul style="list-style-type: none"> ▪ A SIP&P must contain a description of the factors that may affect the value of the assets of the plan as a whole, and the relationship of those factors to the types of investment options offered, which must be diversified and involve varying degrees of risk and expected return, and also allow the creation of portfolios that are generally well-adapted to the needs of the members. This

		<p>includes but is not necessarily limited to a description of the following:</p> <ul style="list-style-type: none"> ▪ (a) to (h), as above, except revise (c) to: “rate of return expectations of the funds offered” <p>The prescribed persons or entities include:</p> <ul style="list-style-type: none"> • any pension committee established (where the administrator is not a pension committee) • any pension advisory committee • plan actuary • pension fund trustee • pension fundholder/custodian • pension fund investment manager • plan/fund auditor • plan/fund accountant • union • any agent or representative of the above <p>(The inclusion of trustees, fundholders and custodians on this list will be revisited as work is completed on the category-two principles (fundholder issue).)</p>
10(1)	Contributions to, contributions owing to or amounts payable from a pension fund shall be credited with interest as prescribed.	<p><u>Contributions to the Fund</u> Interest shall be credited at least once in every plan year at the rates specified below.</p> <p>DC <u>All Employer and Employee Contributions</u> The net rate of return attributed to the operation of the fund or part of the fund to which the contributions are made.</p> <p>DB <u>Member required contributions</u> Either of the following two net rates of return as specified by the plan: a)The 5-year personal fixed term published monthly by Stats Can and the Bank of Canada averaged over not more than 12 months (CANSIM Series rate B 14045 or V122515) or b)The net rate of return attributed to the operation of the fund or part of the fund to which the contributions are made</p>

		<p><u>Member additional voluntary contributions and optional ancillary contributions</u> The net rate of return attributed to the operation of the fund or part of the fund to which the contributions are made.</p> <p><u>Contributions Owing to the Fund</u> Interest commences to accrue no later than the first of the month following the month in which the contributions were required to be paid in to the pension fund at the following rates.</p> <p><u>DC</u> The net rate of return of the fund not to be less than zero</p> <p><u>DB</u> The going concern discount rate used in the latest valuation report to determine the employer required contributions.</p> <p><u>Amounts payable from the Fund</u> Interest shall accrue from at least the first of the month following the date payment was owed until at least the first of the month in which: Retirement – the pension benefit payment begins Cessation of Membership or Marital Breakdown – the contributions are returned or the commuted value is transferred. If there are residual transfer payments, interest on the delayed payments shall accrue to the date of payout. Death – the survivor pension commences, contributions are returned or a transfer is made.</p> <p><u>Interest shall be paid at the rates specified below</u> Return of contributions or pension benefit payments begin: The plan shall specify either a) The 5-year personal fixed term published monthly by Stats Can and the Bank of Canada averaged over not more than 12 months (CANSIM Series rate B 14045 or V122515) or b) The net rate of return of the fund not to be less than zero.</p> <p><u>Commuted value transfers or residual transfer payments</u> The discount rate used to determine the commuted value.</p>
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11(1)	Contributions which have been deducted from members' remuneration or contributions received by the administrator from participating employers in a multi-employer pension plan, must be remitted within the prescribed period of time to the pension fund. Such contributions are deemed to be held in trust for plan members and other plan beneficiaries.	Prescribed period of time: Member Contributions (including MEPPs): Within 30 days following the month in which the sum was received or deducted. Employer Contributions (incl. DB current service and special payments): Within 30 days following the month for which the contributions are payable. If contributions relate to employer profits, within 90 days after the end of the year to which the contribution relates.
12(1)	The administrator of a pension plan shall file the following with the regulatory authority in the form required by the regulatory authority: <ul style="list-style-type: none"> • an information return; • if the pension plan provides defined benefits, actuarial information; • financial information, including audited financial statements of the pension fund as prescribed; and, • any other information required under the Act or regulation. 	Audited Financial Statements as Prescribed; All plans must file audited financial statements of the pension fund except where: a) all funds are held by one insurance company in any type of account, or b) all funds are held in the pooled funds of one trust company, or c) all funds are held outside the pooled funds of one trust company in some other funding arrangement and there is less than \$5,000,000 in total assets (MV), or d) all funds are held in a qualified annuity contract. All Multi-employer plans and plans established through a Pension Fund Society must submit an auditor's report regardless of the exceptions.
12(2)	Unless authorized by the regulatory authority in writing, any information required to be filed with the regulatory authority shall be filed within the prescribed period of time.	Prescribed periods of time: Valuation reports – within 60 days after the date of establishment of the plan. Ongoing plan – within 9 months of the review date Interim cost certificates following a plan amendment – within 60 days of the adoption of the amendment Annual Information Return – within 6 months after the end of each plan fiscal year Financial Statements/audit reports (where required) - within 6 months after the end of each plan fiscal year Wind-up report - within 6 months after the effective date of the wind-up.

12(5)	<p>The administrator of a pension plan shall provide with the prescribed times:</p> <ul style="list-style-type: none"> • a summary of the pension plan to each active member of the plan and any other person who is entitled to join the plan; • an annual statement containing the prescribed information to each active member of the plan; and • any other prescribed information to the plan members and other plan beneficiaries. 	<p>Prescribed times: Booklet - within 60 days of establishment of plan for members who join on the date the plan is established; - to a person who will become eligible, 60 days prior to that eligibility date; -to a person who becomes eligible upon commencing employment, within 60 days following commencement of employment.</p> <p>Annual statement – within 6 months after the end of the plan fiscal year</p> <p>Prescribed information, as applicable to the plan: Annual Statement</p> <ol style="list-style-type: none"> 1. name of plan and provincial/federal registration number 2. contact information of plan administrator 3. member’s name and date of birth 4. period covered by the statement 5. membership date and, except for MEPP, date of employment 6. normal retirement date 7. early retirement date for reduced pension 8. earliest date for receipt of unreduced pension 9. name of spouse or common-law partner 10. name of designated beneficiary 11. member’s required contributions made during period 12. accumulated value of required contributions to end of period 13. additional voluntary contributions made during the period 14. accumulated value of additional voluntary contributions to end of period 15. member’s optional ancillary contributions made during period 16. accumulated value of optional ancillary contributions to end of period 17. transferred contributions for which service under the plan has not been credited 18. for a defined contribution plan, the employer contributions allocated to the member during the period and the accumulated value of the employer contributions to the end of the period 19. for a defined benefit plan, the years of employment to end of period used to calculate pension benefits, the accrued annual pension payable at NRD, the salary used to determine the benefit, and information as to whether the pension is offset or coordinated with CPP, QPP or OAS 20. solvency ratio and steps to be taken to bring solvency ratio to 1
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		<ol style="list-style-type: none"> 21. whether the employer has taken a contribution holiday in the period covered by the statement 22. explanation of any amendment made during the period where the Regulatory authority has dispensed with previous notice 23. if permitted, the amount of optional ancillary contributions the member could make the following year, the optional ancillary benefits chosen by the member, and a statement regarding the risk of forfeiture of part of the contributions under the <i>Income Tax Act</i> (Canada) 24. right to access information under Model Law Principle 25. if a board of trustees or pension committee is acting as administrator, the names of the trustees, or members on the committee.
12(6)	<p>The following individuals are entitled to inspect prescribed plan information:</p> <ul style="list-style-type: none"> ▪ a member; ▪ the spouse of a member; ▪ any other plan beneficiary; ▪ an employer; ▪ any person required to make contributions on an employer's behalf; ▪ an agent of a member, the spouse of a member, any other plan beneficiary or an employer; ▪ a representative of a collective bargaining agent that represents members of the plan; or, ▪ a prescribed person. 	<p>Prescribed Information:</p> <ul style="list-style-type: none"> - The provisions of the current plan and any amendments - any documents required to be filed with the Regulatory authority, including any trust deed or agreement, insurance contract, bylaw or resolution relating to the plan - the provisions of any previous plan if the current plan is a continuing plan, including amendments - any documents related to a previous version of the plan required to be filed with the Regulatory authority - the provisions of any document setting out the employer's responsibilities with respect to the pension plan - any document whereby the administration of the pension plan or pension fund is delegated -copies of any information returns filed with the Regulatory authority -copies of any financial information or report filed with the Regulatory authority - copies of correspondence in respect of the pension plan between the Regulatory authority and the administrator within 7 years preceding the date of the request - copies of those parts of an agreement concerning the purchase or sale of a business or the assets of the business that relate to the pension plan - copies of any statement of investment policies and goals established for the pension fund - copies of any audited financial statement or audit report for the pension fund - information pertaining to ongoing examinations by the regulatory authority are exempt from this provision while the examination is ongoing <hr/> <p>Prescribed person: None at this time</p>

12(7)	<p>Upon written request, individuals who are entitled to inspect prescribed plan information may (i) inspect the prescribed plan information held by the administrator once per calendar year without charge at a place agreed upon by the individual and the administrator; or, (ii) request copies of prescribed plan information held by the administrator once per calendar year for a reasonable fee that may be waived.</p>	Same as prescribed plan information under 12(6)
12 (8)	<p>The plan administrator will provide within the prescribed times an individual statement containing the prescribed information to:</p> <ul style="list-style-type: none"> ▪ any plan member who terminates employment; ▪ any plan member who ceases to be an active member of the pension plan; ▪ any plan member who retires; ▪ any person entitled to death benefits upon the death of the member; ▪ all members and other plan beneficiaries upon the approval of the wind up of the pension plan by the regulatory authority; or, ▪ the spouse or former spouse of a member who has an entitlement to benefits that arose from the breakdown of a spousal relationship. 	<p>Prescribed times:</p> <p><i>Termination Statement:</i> within 60 days following the member’s termination of employment or cessation of active membership, or, if notice is not provided to the administrator prior to the event, within 60 days following the administrator’s receipt of the notice.</p> <p><i>Retirement Statement:</i> within 60 days prior to the member’s normal retirement date or 60 days after the date at which the member has indicated that he or she intends to retire.</p> <p><i>Death Statement:</i> within 60 days following the administrator’s receipt of the notice of the member’s death.</p> <p><i>Wind up Statement:</i> within 60 days following the regulatory authority’s approval of the wind up of the pension plan.</p> <p><i>Termination/ retirement statement for spouse or former spouse with entitlements to benefits:</i> Where the member terminates employment or ceases active membership:</p> <ul style="list-style-type: none"> • within 60 days following the member’s termination of employment or cessation of active membership, or • if notice is not provided to the administrator prior to the event, within 60 days following the administrator’s receipt of the notice, or <p>Where the member retires:</p> <ul style="list-style-type: none"> • within 60 days prior to the member’s normal retirement date, or • within 60 days following the date at which the member has indicated that he

		<p>or she intends to retire.</p> <p>Prescribed information, as applicable to the plan:</p> <p>Termination Statement:</p> <ol style="list-style-type: none"> 1. name of pension plan and provincial/federal registration number 2. contact information of plan administrator 3. member's name and date of birth 4. date of membership and years of employment credited under plan for purposes of calculating pension benefit 5. member's termination date, normal retirement date, early retirement date and earliest date unreduced pension is payable 6. pension benefits and ancillary benefits to which the member is entitled and any options regarding those benefits and any adjustment as a result of early or postponed retirement; deadline for exercising options 7. contributions made since last statement and accumulated contributions to termination date (required, AVCs and OACs, transferred contributions for which service has not been credited). 8. name of spouse or common-law partner or designated beneficiary 9. if applicable, the formula for offset or coordination with CPP/QPP/OAS 10. any bridging benefit or special allowance and date on which bridging benefit or special allowance ceases to be paid 11. any indexation of pension during deferral or after retirement 12. benefit payable on death before retirement 13. benefit payable on death after retirement 14. options for excess contributions (50% rule) 15. OACs forfeited 16. transfer value 17. transfer options, transfer ratio and amount that may be transferred 18. schedule and amounts of transfer deficiency payments 19. amount of any refunds and effect of election to receive a refund on the member's pension or deferred pension 20. right to access information under Model Law Principle 12 until benefits removed from the plan
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		<p>Retirement Statement:</p> <ol style="list-style-type: none"> 1. name of plan and provincial/federal registration number 2. contact information of plan administrator 3. member's name and date of birth 4. date of membership and years of employment credited under the plan for purposes of calculating the pension benefit 5. if applicable, name and date of birth of spouse or common-law partner, or beneficiary 6. commencement date for payment of pension benefits 7. amount of pension to which member is entitled based on administrator's records and elections made by the member 8. any options respecting payment of the pension available to the member, details of the procedures for exercising the options, and the time period in which the options may be exercised 9. any increase or reduction in the pension resulting from early or postponed retirement 10. accumulated value of required contributions, AVCs and OACs, transferred contributions for which service has not been credited and employer contributions for defined contribution benefits 11. amount of pension purchased with additional voluntary contributions, excess contributions, transferred contributions for which service has not been credited and employer contributions for defined contribution benefits 12. optional ancillary benefits purchased, the amount of any excess and that the excess is retained in the plan 13. if applicable, the formula for offset or coordination with CPP/QPP/OAS 14. any bridging benefits or special allowances and the date on which the benefits or allowances cease to be paid 15. any indexation provisions applicable 16. any benefit payable in the event of the member's death 17. any refunds to which the member is entitled 18. procedures/options for spousal waiver 19. right to access information under Model Law Principle 12 <p>Death Statement:</p> <ol style="list-style-type: none"> 1. name of plan and provincial/federal registration number 2. contact information of plan administrator 3. name of deceased member
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12(9)	Where the plan administrator provides an individual statement to a member or other plan beneficiary under [the above principle], the member or other beneficiary has a prescribed period of time to make their election and advise the plan administrator of their election.	<p>Prescribed times:</p> <ul style="list-style-type: none"> - Death statement: Within 90 days or such longer period of time as specified in the plan after the receipt of the death statement - All other statements: Within 90 days of the receipt of the statement.
12(10)	Where the plan administrator has been advised of a benefit election under [the above principle], the administrator shall complete the settlement of the transaction within the prescribed times.	<p>Prescribed times: Within 60 days following the receipt of all documentation necessary to process the transaction.</p>
13(1)	A pension plan must identify one or more prescribed classes of employees eligible to be members of the pension plan.	<p>Prescribed classes of employees:</p> <ul style="list-style-type: none"> All Salaried Hourly Unionized

		<p>Non-unionized Supervisory Management Executive Officers of the employer Significant shareholders of the employer Persons connected to the employer Geographic location Date of hire Any other identifiable group that has been accepted by the Regulatory authority</p>
13(7)	<p>Separate pension plans may be established for full-time and less than full-time employees of a prescribed class, if the plans are comparable, taking into account differences in number of hours worked by members:</p> <ul style="list-style-type: none"> • respecting a defined benefit provision, in terms of the value of the benefits provided; and, • respecting a defined contribution provision, in terms of the rate or amount of contributions. 	See 13(1)
14(1)	<p>A pension plan must provide for the payment of a pension benefit. Notwithstanding, in the case of a defined contribution provision a pension plan may provide for the payment of a prescribed periodic income.</p>	<p>A pension plan may provide a variable benefit with respect to amounts earned under a defined contributions provision of the plan. Only plans with a DC provision may offer this form of benefit.</p> <p>A pension plan providing a variable benefit must contractually include</p> <ul style="list-style-type: none"> • a statement that this option applies only to benefits accrued under a DC provision • the requirement for a spousal waiver of the 60% joint life pension to be completed before income payments commence. • the same options for commutation as are adopted under the model law regulations for a LIF (e.g. non residency / shortened life / small amounts).

		<ul style="list-style-type: none"> • the fiscal year of the variable benefit is December 31 • a benefit formula that is the same as that adopted under the model law regulations for a LIF, including provisions dealing with additional calculations when new funds are transferred in (if applicable), and the treatment of payments when funds are transferred out. • portability of benefits <ul style="list-style-type: none"> ○ *‘‘Out’’ to a LIF, a LIRA (if the individual is eligible), another pension plan (if that plan so permits), or to purchase a life annuity ○ ‘‘In’’ the plan may (optional) permit a member to transfer funds from a LIF / LIRA / another pension plan. ▪ The death benefit is payable to the spouse unless waived, if waived to beneficiary / estate. ▪ Optional to plan <ul style="list-style-type: none"> - allowing spouse to continue to receive income from the plan (requires designation as a specified beneficiary under CRA). - Allow the member to commence variable benefits at any time after the earliest pension commencement date permitted by the plan, but continue in employment and as an active member of the plan. Where this occurs, a spouse’s waiver is required (if applicable), with respect to the variable benefit, and accounts must be separated and treated the same as in the case of a rehired pensioner who recommences active membership and continues to receive his retirement income benefit. • Rehiring of a person receiving the variable benefit <ul style="list-style-type: none"> ○ At the option of the member, payments may continue or may be suspended – cannot collapse account back into active part of plan ○ The participant must immediately rejoin plan (no additional service requirements for eligibility or vesting) <ul style="list-style-type: none"> • the member will have two accounts under the plan, the variable benefit account and one for active accruals and there is no commingling with funds in the variable benefit account with those in the active accrual account, while the member remains active • Member has full portability options with new accrued benefit with need for new spousal waiver to transfer these funds.
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14(2)	A pension plan must provide for formulas, complying with the prescribed criteria, for determining benefits, member and employer contributions and for allocating contributions.	<p>The formulas for determining benefits under defined Benefit provisions, member contributions relating to defined benefit provisions and contributions relating to defined contribution provisions of a plan must be uniform</p> <ul style="list-style-type: none"> a) for each year of future employment, b) for each member of the prescribed class, and c) whether the amounts are being determined as a going concern, or on plan termination <p>except to the extent that the Regulatory authority approves a variation in any formula that the Regulatory authority considers reasonable.</p> <ul style="list-style-type: none"> • Formulas for determining the pension under a defined benefit provision may not be based on a member's age on joining the plan.

		<ul style="list-style-type: none"> • Where a formula relating to a defined contribution provision provides for contributions on a basis other than <ul style="list-style-type: none"> (a) a percentage of a member's remuneration , or (b) a fixed dollar amount in respect of each member, the formula for establishing the amount of those contributions may not be based solely on the age of the member and it must be based on factors other than the accumulated value of the contributions made by or on the behalf of the member with interest at the date that amount is established. <p>Where an additional amount of benefit is payable from pension commencement and the plan provides for that additional amount to cease or be reduced at the date when a pension becomes available, or when receipt of the pension occurs, under the <i>Canada Pension Plan</i> (Canada), the <i>Quebec Pension Plan</i> (Quebec), or the <i>Old Age Security Act</i> (Canada), then for the purposes of the plan, that date shall be treated as being the date when the person entitled to that pension attains the age of 65 years, notwithstanding that the pension may actually be payable at another time.</p>
14(3)	<p>A pension plan may provide for the following ancillary benefits:</p> <ul style="list-style-type: none"> ▪ disability benefits; ▪ bridging benefits; ▪ supplementary benefits, other than bridging benefits, payable for a temporary period of time; ▪ pre-retirement death benefits in excess of those required by the Act or regulation; ▪ early retirement benefits in excess of those required by the Act or regulation; ▪ joint and survivor pension benefits in excess of those required by the Act or regulation; ▪ postponed retirement benefits in excess of those required by the Act or regulation; and, ▪ any prescribed ancillary benefit. 	<p>Prescribed ancillary benefits: None at this time</p>

16(7)	<p>A pension plan may provide for the reduction of the member's pension benefit to reflect benefits that may be payable under the Canada Pension Plan or Quebec Pension Plan, as prescribed. If such a reduction is made, no further reduction may be made to reflect subsequent changes in the benefits payable to the member under the Canada Pension Plan or Quebec Pension Plan.</p>	<p><u>Offsets</u></p> <p>A pension plan may provide for the offset of the member's pension benefit to reflect benefits that may be payable under the Canada Pension Plan or Quebec Pension Plan.</p> <p>The reduction must not exceed the following:</p> <p>$A \times B/35$ where</p> <p>A = the maximum amount of pension that would be payable under CPP/QPP to a person who has reached the first day of the month following entitlement to unreduced benefits under the <i>Canada Pension Plan</i> or <i>Québec Pension Plan</i> and calculated as of the date of the member's pension entitlement under the plan is determined; and</p> <p>B = the number of years, not exceeding 35, including parts of a year, of employment credited to the person under the pension plan.</p> <p>If such a reduction is made, no further reduction may be made to reflect subsequent changes in the benefits payable to the member under the <i>Canada Pension Plan</i> or <i>Quebec Pension Plan</i>.</p> <p>Offsets with respect to OAS are not permitted.</p> <p><u>Coordination</u></p> <p>A pension plan may provide that a member or former member may elect to receive a pension the amount of which is adjusted by reference to benefits payable under CPP, QPP or OAS, provided that</p> <ul style="list-style-type: none"> • the pension payable after the reduction is not less than the maximum commutable amount of pension, and • the spouse of the member or former member has authorized in writing the election of this option by the member. <p>The reduction will occur no later than the first day of the month following the month in which the member is entitled to unreduced benefits under the <i>Canada Pension Plan</i> or <i>Québec Pension Plan</i>. If such a reduction is made, no further reduction may be made to reflect subsequent changes in the benefits payable to the member under the Canada Pension Plan or Quebec Pension Plan.</p>
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18(4)	The spouse of a plan member may waive his or her entitlement to a joint and survivor pension benefit by providing a waiver, in a form acceptable to the regulatory authority, to the plan administrator within the prescribed period of the time before payment of the member's pension benefit commences.	Prescribed period of time: 90 days
19(3)	If the spouse does not provide his or her election within the prescribed time, the spouse will be deemed to have elected a lump sum payment.	Prescribed period of time: See regulation 12(9)
19(8)	A spouse may, before the death of a member, waive entitlement to the statutory pre-retirement death benefit in a form containing the prescribed information.	Prescribed information: The form must be signed by the spouse and witnessed before the date of the member's death and contain: <ol style="list-style-type: none"> 1. the date of the declaration; 2. the names and addresses of the member and the waiving spouse; 3. the name of the member's pension plan and the registration number assigned to it by the regulatory authority; 4. a description of the pre-retirement death benefit required to be paid to the spouse under section 19; 5. contains a statement indicating that the spouse: <ul style="list-style-type: none"> ▪ is aware of his or her right to a pre-retirement death benefit on the death of the member ▪ is aware that by signing the waiver giving up his or her entitlement, on the death of the member, to any pre-retirement death benefit ▪ may revoke the waiver at any time prior to the date of the member's death by providing written notice to the pension plan administrator; 6. contains a statement the waiver is being signed freely and voluntarily without any compulsion on the part of the member and outside the immediate presence of the member; 7. advises the spouse to retain legal counsel.
19(9)	A spouse may, before the death of a member, revoke such waiver in a form containing the prescribed information.	For purposes of this principle and the written revocation, the revocation must be signed by the spouse that granted the waiver, and witnessed, before the date of the member's death and contain:

		<ol style="list-style-type: none"> 1. the date of the revocation; 2. the names and addresses of the member and the spouse; 3. the name of the member's pension plan and the registration number assigned to it by the regulatory authority; 4. a description of the pre-retirement death benefit required to be paid to the spouse under section 19; 5. contains a statement indicating that the spouse: <ul style="list-style-type: none"> ▪ is aware of his or her right to a pre-retirement death benefit on the death of the member ▪ is aware that he or she had previously waived his or her entitlement to a pre-retirement death benefit on the death of the member under section 19 ▪ now wishes to revoke the waiver ▪ is aware that by revoking the waiver he or she will have a right to a pre-retirement death benefit on the death of the member
20(2)	<p>A plan may provide that the member whose continuous employment is terminated must make the transfer referred to in [the preceding bullet], as prescribed.</p>	<p>Prescribed transfer:</p> <p>Where a plan provides that a member whose continuous employment is terminated must transfer defined contribution benefits from the plan, the member, on joining the plan, must consent to the administrator opening a prescribed retirement savings arrangement where funds are transferred under a tax deferred arrangement.</p> <p>When the member has not made an election with respect to his or her defined contribution benefits within the 90-day period following receipt of his or her termination statement:</p> <ul style="list-style-type: none"> ▪ The plan may specify the prescribed retirement savings arrangement where the defined contribution benefits will be transferred; ▪ Any beneficiary designation made by the member for the purposes of the defined contribution provision of the plan shall apply for the purpose of the prescribed retirement savings arrangement where the defined contribution benefits are transferred; and, ▪ The administrator shall have the power to act on behalf of the member for signing any document to process the transfer of the defined contribution benefits to a prescribed retirement savings arrangement. ▪ Once the transfer is made, the plan administrator will advise the member in writing, providing him with the details of the prescribed retirement savings

		<p>arrangement and inform the member of the beneficiary designation.</p> <p>If the defined contribution benefits are less than the small pension limits established in section 21(2) of these regulations, the member is deemed to elect the cash out of their pension benefit.</p>
20(5)	<p>A member may transfer a commuted value from a pension plan:</p> <ul style="list-style-type: none"> • to the pension fund of another pension plan if the other plan permits; • to a prescribed retirement savings arrangement; or • for the purchase of an immediate or deferred annuity. 	<p>Prescribed Retirement Savings Arrangements:</p> <p><u>Locked-in Retirement Account</u></p> <ol style="list-style-type: none"> 1. no money can be withdrawn except for transfer to the pension fund of a registered pension plan, for transfer to another LIRA, to purchase an immediate or deferred life annuity, to transfer to a LIF, or to pay in cash because of small amounts at age 65 or because of considerably shortened life expectancy, or for transfers due to non-residency. 2. money will not be assigned, charged, anticipated or given as security except as permitted a division on marriage breakdown or for a maintenance order (or appropriate term for that jurisdiction). 3. money is exempt from execution, seizure or attachment except for a maintenance order (or appropriate term for that jurisdiction) 4. except for commutation because of considerably shortened life expectancy, attachment for enforcement of a maintenance order, commutation of small amounts at age 65, money and investment earnings will not be commuted or surrendered during the lifetime of the member and any transaction purporting to surrender or commute the money is void. 5. subsequent transfers are only permitted if the transfer would be permitted under the Act and Regulations and the subsequent transferee agrees to administer the amount transferred as a pension or deferred pension under the Act and regulations. 6. The transferee must advise any subsequent transferee in writing that the amount transferred must be administered as a pension or deferred pension under the Act and regulations. 7. On the death of the owner, the spouse or common-law partner (or, if none, the beneficiary or estate) will be entitled to the full value of the account. Spouse may waive entitlement prior to death of owner by filing waiver with issuer, and may revoke waiver prior to owner's death by providing written notice of revocation to the issuer. <p>The LIRA requirements should form a separate schedule in the regulations and be attached as part of the contract. This will eliminate the requirement for review by the regulator.</p>

		<p><u>Life income Fund</u></p> <ol style="list-style-type: none"> 1. must be a RRIF under the Income Tax Act (Canada) 2. only locked-in money may be transferred to a LIF 3. income cannot commence earlier than the earliest date the owner could commence income under the pension plan where the money originated 4. LIF cannot be commuted, withdrawn or surrendered except for commutation of small amounts at age 65 or shortened life expectancy or for transfers due to non-residency. 5. LIF cannot be assigned, charged or given as security except under marriage breakdown or maintenance orders 6. LIF is exempt from execution, seizure or attachment except for maintenance orders 7. minimum LIF payment determined under Income Tax Act (Canada) 8. maximum LIF payments determined by factor multiplied by LIF balance 9. Payment of temporary Income for people between ages 54 and 65 10. information to be provided by financial institution to LIF owner at beginning of fiscal year 11. information to be provided to LIF owner when additional amounts are transferred to a LIF 12. permitted transfers from a LIF 13. requirements re: payment of death benefit and waiver and revocation of waiver prior to death 14. withdrawals permitted for small amounts at age 65 and for shortened life expectancy <p>The LIF requirements should form a separate schedule in the regulations and be attached as part of the contract. This will eliminate the requirement for review by the regulator.</p> <p>The Factors for calculating LIF payments and temporary income should be as developed by Quebec and adopted by some jurisdictions.</p> <p><u>Annuity Purchase</u></p> <p>Where an annuity is purchased from a prescribed retirement savings arrangement, the annuity must</p> <ul style="list-style-type: none"> • Be provided by a person authorized under the laws of Canada or a province
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		<p>to sell annuities as defined in Section 248 of the <i>Income Tax Act</i> (Canada) under an insurance contract,</p> <ul style="list-style-type: none"> • Not commence earlier than the earliest date the person could have commenced pension payments under the pension plan. • Include the requirement for J&S pension, with waiver option. • Include prohibitions against assignment, charging, anticipating, and giving as security, surrendering or commuting. • If the annuitant dies before the annuity commences, the death benefit must be paid in the same manner as the LIRA death benefit.
20(7)	The amount that may be transferred from the pension plan is subject to a limit based on the solvency of the plan and determined in the prescribed manner.	<p>Prescribed Manner:</p> <p>If the solvency ratio of the plan as at the most recent actuarial valuation is 1 or greater, the entire value of the benefit payable shall be transferred.</p> <p>If the solvency ratio of the plan as at the most recent actuarial valuation is less than one</p> <ul style="list-style-type: none"> • the employer may contribute the amount necessary to eliminate the deficiency in respect of an individual and transfer the entire value of the benefit at the member's termination , or • the solvent portion of the benefit shall be transferred at the member's termination and the balance shall be transferred at the earlier of 5 years from the date of the member's termination or the date that the solvency deficiency is amortized. <p>Notwithstanding, if the aggregate of all transfers from the plan is less than 5 per cent of the market value of assets since the last review date, the entire value of the benefit must be transferred at the member's termination.</p>
21(3)	The requirement that amounts transferred from the plan on plan termination or termination of active membership must be locked-in to provide a lifetime pension on retirement does not apply to prescribed amounts.	<p>Prescribed amounts:</p> <p>Additional voluntary contributions are not subject to locking-in.</p> <p>Optional ancillary contributions are not subject to locking-in.</p> <p>Excess contributions arising from the 50 per cent Rule (Model Law Principle 17) are not subject to locking-in.</p> <p>Where a pension plan permits, a deferred pension plan member may withdraw the commuted value of the deferred benefit or all or part of the fund by reason of the</p>

		<p>disability that is likely to shorten considerably the life expectancy of the member. The member must complete the required form, and provide a statement provided by a physician who is licensed to practise medicine in a jurisdiction in Canada that the disability has shortened considerably the life expectancy of the member, to the plan administrator or financial institution. Spousal consent is required (not if living separate and apart and a division has been made). The plan administrator or financial institution must make the payments to the member within 60 days of receipt of an application form and statement if the requirements for release have been satisfied.</p> <p>A pension plan containing only defined benefit provisions may provide that a benefit may be commuted if either:</p> <ul style="list-style-type: none"> i) the annual pension payable at normal retirement date is not more than 4% of YMPE in year of termination of employment, or ii) if the commuted value of a benefit is less than 20% of the YMPE in year of termination of employment. <p>No spousal consent is required.</p> <p>A pension plan containing any other pension benefit provisions may provide that a benefit be commuted if the commuted value of the total benefit is less than 20% of the YMPE in year of termination of employment. No spousal consent is required.</p> <p>A benefit may be commuted upon attainment of age 65 if the total value of all defined contribution pension plan benefits, LIRAs, LIFs is less than 40 % of the YMPE. All assets, regardless of jurisdiction, must be included in this analysis. Spousal consent is required.</p> <p>A deferred pension plan member where the plan provides, or the owner of a LIRA or LIF, may withdraw the commuted value of the benefit or all or part of the fund if</p> <ol style="list-style-type: none"> 1. the former member or owner has been absent from Canada for 2 or more years and completes a certificate of non-residency using the required form, 2. the former member or owner has become a non-resident of Canada as determined for the purposes of the <i>Income Tax Act</i> (Canada) and attaches to the required form written evidence that Canada Revenue Agency has determined the person to be a non-resident of Canada for the purposes of the <i>Income Tax Act</i> (Canada) , and 3. the former member's or owner's spouse, if any, waives on a required form, any rights that he or she may have in the benefit or fund under the Act, the
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		regulations or the pension plan and files the completed form with the plan administrator or financial institution.
21(4)	Any transfer of funds from a plan, which does not comply with the requirement that amounts transferred from the plan on plan termination or termination of active membership must be locked-in to provide a pension on retirement or that is not a prescribed amount, is void.	Same as 21(2)
24(4)	The regulatory authority may on receipt of a written request, and by written notice to the applicant, extend any procedural time limit as prescribed. Extensions may be subject to such conditions as the Regulatory authority deems appropriate.	<p>The Regulatory authority may extend the deadlines for</p> <ul style="list-style-type: none"> (a) filing <ul style="list-style-type: none"> (i) documents to register a new plan (ii) Annual Information Returns (iii) actuarial valuations (iv) Audited Financial Statements (v) amendments (vi) requested documents (vii) information updates (vii) required documents (e.g. transfer agreements) (viii) termination report (b) disclosure <ul style="list-style-type: none"> (i) employee booklets (ii) statements (annual, termination, etc.) (iii) access to documents (iv) notice of amendments (v) benefit calculation information (c) directions for compliance (d) payment of benefits (e) appointment of an administrator (ongoing) (f) disbursement of assets on plan termination

29(2)	<p>If a person fails to comply with a decision, order or direction of compliance of the regulatory authority, the regulatory authority may order the wind up of the pension plan to which the decision, order or direction of compliance relates after the prescribed period of time after the end of the period of time specified in the decision, order or direction of compliance. If the regulatory authority orders the wind up of the plan, the regulatory authority must give notice of the order to the administrator of the plan.</p>	<p>Prescribed time: 60 days after the end of the time period specified in the decision</p>
29(3)	<p>Any decision, order or direction of compliance issued by the regulatory authority shall:</p> <ul style="list-style-type: none"> • include written reasons; • be served on the administrator of the pension plan to which the decision, order or direction of compliance relates; • specify the period of time within which the decision, order or direction of compliance must be complied with; and, • state that the person on whom the decision, order or direction of compliance is served may make written representations to the regulatory authority regarding the decision, order or direction of compliance within the prescribed time. 	<p>Same as 30(1)</p>

30(1)	Where the regulatory authority has issued a decision, order or direction of compliance, the person who received the decision, order or direction of compliance may make written representations, including the grounds for the objection and the related facts, to the regulatory authority within the prescribed period of time.	Prescribed Time: Within 60 days of the date the decision, order or direction was served.
32(2)	Any person who commits an offence is liable on summary conviction to the fines and other penalties as prescribed.	Fines and other penalties as prescribed: Every person who is guilty of an offence is liable on conviction to a fine of not more than \$100,000 for the first conviction and not more than \$200,000 for each subsequent conviction.
32(3)	<p>If a corporation or unincorporated body commits an offence under the Act, every officer, director, official or agent of the corporation and every person acting in a similar capacity or performing similar functions in the unincorporated body who:</p> <ul style="list-style-type: none"> • caused, directed, authorized, assented to, acquiesced in, participated in or permitted the commission of the offence by the corporation or unincorporated body; or, • failed to take all reasonable care in the circumstances to prevent the commission of the offence by the corporation or unincorporated body, <p>is guilty of an offence and is liable on summary conviction to the fines and other penalties as prescribed, whether or not the corporation or unincorporated body has been prosecuted for or convicted of the offence arising from the same facts or circumstances.</p>	same as 32(2)

32(4)	If an employer, administrator of a pension plan or an agent of either is convicted of an offence, the court may, in addition to imposing the fines and other penalties as prescribed, order the employer, or a director, officer or agent of the employer, to remit to the pension fund all amounts found not to have been remitted, with interest, or the amounts found to have been improperly withdrawn from the pension fund, with interest. The rate of interest shall be equal to the rate of return for the pension fund.	same as 32(2)
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PART IV:

Papers on Category-Two Principles

INTRODUCTION

During the CAPSA consultations on the document entitled *Proposed Regulatory Principles for a Model Pension Law (January 2004)*, stakeholders noted that some of the principles contained in the document required additional details regarding their application. As such, subsequent to the consultation period, CAPSA identified these principles as “principles requiring further development”, or “category-two principles”. These principles included the treatment of phased retirement arrangements, simplified pension plans, flexible pension plans and determining member location.

In response to the stakeholder feedback noted above, CAPSA has further developed and finalized the category-two principles, which are contained in this section. Included in this section are papers describing each of the category-two principles noted above, the issues addressed by the principles, background on the principles, the policy intent, any required definitions and recommendations for any related regulations that may be required.

The following category-two principles are to be read in conjunction with the category-one principles presented in Part II of this document and the Recommendations for Model Regulations in Part III of this document, as some of the category-two principles refer to such principles and model regulations.

1. PHASED RETIREMENT

Issue:

The Income Tax Regulations have been changed to permit continued accrual of pension benefits in a defined benefit pension plan, while in receipt of payments from the same plan, or another plan of the same or related employer, under certain conditions. Pension legislation should provide a framework for phased retirement that is consistent with the Income Tax rule changes.

Background:

Until recently, federal tax rules prohibited the simultaneous payment of the pension benefit and accrual of pension benefits from the same plan or another plan of the same or related employer. Several jurisdictions developed a model for accommodating a form of phased retirement that complied with this prohibition. Under that model, subject to a work reduction agreement between the employer and employee, eligible employees (generally within 10 years of normal retirement) could annually receive a lump sum (up to a certain limit) from their pension, while continuing to work and accrue benefits.

However, this model has had limited use for several reasons. Most importantly, there is a requirement that the pension be reduced at full retirement to reflect the value of the lump sum payments received during the phased period. Further, members opting for phased retirement cannot take advantage of any early retirement provisions such as bridging benefits or lower actuarial reductions. Finally, the annual lump sum withdrawal may not be a convenient form of payment for many individuals.

In its 2007 budget, the federal government announced the intention to change the tax laws to permit simultaneous receipt of pension benefits and accrual of pension benefits. In December 2007, legislation was passed that changed the tax rules. The new tax rules permit monthly payments in the amount of up to 60% of the accrued pension to be made to eligible members. The tax rules do not impose any requirement that a member reduce work hours in order to receive a pension payment and the amount of pension to be paid need not be linked to any work reduction. Bridging benefits are also permitted to be paid, either on a stand-alone basis or in conjunction with phased retirement benefits, during the phased period.

The main policy objective expressed by various governments is to alleviate a potential labour shortage by encouraging employees to work longer, beyond when they would normally retire. The changes proposed in the 2007 federal budget and as passed in legislation are consistent with this objective.

Policy Intent:

As a general principle, whether a pension plan offers phased retirement should be at the discretion of the employer. Pension standards legislation should not require plans to provide for phased retirement. Further, it should be the employer's decision whether to offer phased retirement to a particular individual, and the terms and conditions, including the level of pension payout, would be agreed to between the employer and employee. Employees retain the right to fully retire and receive their full pension.

During phased retirement, a member will generally be considered as an active member, and the payment of phased retirement benefits will not be treated as a commencement of pension in pay. Phased retirement benefits will be treated as temporary, payable over the phased retirement period only. The phased retirement arrangement ends when the member terminates employment, or the plan terminates. On full retirement the member will make any elections as to the form of the lifetime pension.

At the time of entering phased retirement, no election as to the form of pension is made, and for retirees who choose to return to employment under a phased retirement arrangement, any prior election as to the form of pension will be of no effect. The death benefit, portability rights, and information provisions that apply to active members will apply to members in phased retirement.

Pension plans would be permitted to pay a phased retirement benefit up to the maximum percentage of a member's pension entitlement permitted by tax rules. This portion will be based on the normal form of the pension the member is entitled to under the terms of the plan. The amount a member may receive during phased retirement could be adjusted up or down by agreement between the employer and employee.

Tax rules will specify the eligibility requirements, but at a minimum, only members who are at least age 55 and entitled to an immediate pension (reduced or unreduced) will be eligible for this type of phased retirement. In addition, retirees would be eligible for phased retirement. Phased retirement benefits will only be available where a member continues to be employed and accrue pension benefits under the same plan, or another plan of the same or related employer.

As a form of protection, additional disclosure and communications to a member may be required at the time of entering phased retirement, and during phased retirement. There should also be a requirement that the pension on final retirement shall not be reduced to take into account the payments during the phased period.

The current drafting of the Model Law does not allow consent benefits. Model Law should clarify either that phased retirement benefits are not considered

consent benefits, or that consent benefit are permitted only in the case of phased retirement.

Principle:

- Employers should be permitted to offer phased retirement benefits to employees under the conditions set out in the Income Tax rules.
- Phased retirement benefits will only be available where the member is employed and continues to accrue benefits. Phased retirement benefits will end when the member retires, ceases to accrue benefits, or the plan terminates.
- Members receiving phased retirement benefits will generally be treated as active members, not having commenced to receive payment of their pension (e.g. in determining their death benefit and portability rights).
- Pension legislation should provide for enhanced disclosure to members at the time of entering phased retirement and during phased retirement.
- Pension legislation should provide that a member's final pension cannot be reduced to account for payments received during phased retirement.

Definitions:

“Phased retirement benefit” means a benefit equal to a portion of a member's immediate pension benefit, which is received in accordance with the relevant Income Tax provisions.

Revision of Section 14 of the category-one principles: Revise this section to make clear that phased retirement benefits either a) are not considered consent benefits, or b) are permitted as consent benefits.

Revision of Section 17 of the category-one principles: Revise to reflect the phased retirement model described in this paper.

Revision of Section 20 of category-one principles: Revise bullet 4 so that if a member who is receiving a phased retirement benefit dies, the spouse is entitled to the pre retirement benefit to which they would be entitled had the member not been receiving a phased retirement benefit.

Regulations:

Regulations should provide for details of the process for entering phased retirement, including the terms of the agreement, and communications to members prior to entering phased retirement, and during phased retirement.

2. SIMPLIFIED PENSION PLAN

Issue:

CAPSA's *Proposed Regulatory Principles for a Model Pension Law (January 2004)* contained a recommendation that a Simplified Pension Plan that satisfies the prescribed requirements be permitted.

Background:

Small employers have had few options when choosing a retirement plan for their employees. These employers may find traditional plans to be complex, expensive and difficult to explain. While other types of arrangements provided flexibility and inexpensive administration, they did not offer the security or the protection of provincial legislation.

Policy Intent:

In order to address the gap, some jurisdictions now offer small employers a viable solution through Simplified Pension Plan (SPP) regulations.

An SPP is a defined contribution plan, offered and administered by a financial institution, in which employers may participate. Administration of an SPP is simpler than that of a traditional pension plan as the financial institution is the administrator. Unlike a group RRSP, employer contributions to the SPP do not attract the statutory deductions, and the SPP offers the same protection as a traditional pension plan.

Key Provisions of a SPP

Most of the requirements contained in the category-one principles would apply to the SPP with some differences, as set out in the attached *Recommendations for Model Regulations*. The Recommendations for Model Regulations would include the following key provisions:

- the financial institution act as the administrator of an SPP
- the SPP contract contain certain provisions related to administration
- the assets of the SPP – the contributions, investments and investment returns – constitute the pension fund and at no time do these assets constitute assets of the administrator or the employer
- an employer's participation may be terminated by the administrator for failure to comply with the provisions of the contract, including failure to remit the contribution, and
- specified notice be given on amendment of the SPP contract, cessation of a employer's participation in the SPP, and intention by the administrator to terminate or wind up the SPP.

Principle:

Simplified Pension Plans

To streamline the administration and regulation of qualifying pension plans, the Principles should allow for simplified pension plans.

Regulations

The Lieutenant Governor in Council/Governor in Council may make regulations relating to specified areas, including any exemption from the Act or regulation.

- respecting simplified pension plans

Regulations:

SIMPLIFIED PENSION PLAN

Interpretation

(1)(a) "financial institution" means

- (a) a regulated financial institution which is
 - (i) a bank that, by virtue of section 14 or 14.1 of the Bank Act (Canada), is or is to be set out in Schedule I, II or III to that Act,
 - (ii) a trust company incorporated or continued by or under an Act of Canada or a province,
 - (iii) a credit union incorporated or continued by or under an Act of Canada or a province,
 - (iv) such other financial institution that is incorporated or continued by or under an Act of Canada or a province; or
- (b) an insurance company incorporated or continued by or under an Act of Canada or a province, excluding a *Captive Insurance Company, licensed to conduct life insurance business.

*A captive insurance company is one set up by a large company in order to insure its own risks. Thus far B.C. is the only province to permit such companies. Given that one of the key goals of pension legislation is to totally separate the pension fund from the assets of or the undue influence of the employer it would seem inappropriate to permit this type of insurance company to be a fund holder.

(b) A simplified pension plan is a pension plan that

- (i) provides for defined contribution benefits,
- (ii) is administered by a financial institution on behalf of the employees of the employers who have entered into a contract, and

(iii) is subject to the provisions of the Act and regulations except to the extent that they are modified by this provision.

Simplified pension plan contract

(2) An employer may enter into a contract with a financial institution for the purpose of establishing a simplified pension plan for its employees.

(3) A contract that establishes a simplified pension plan shall provide

(a) that the plan is a simplified pension plan and that the financial institution is the administrator of the plan;

(b) the amount and frequency, which must be within the prescribed period of time, of the employee and employer contributions that are required to be remitted by the employer to the financial institution;

(c) the day on which the participation of an employer in the plan will cease as a result of the employer's failure to remit the required contributions to the financial institution;

(d) that the plan is subject to the provisions of this section; and

(e) that the financial institution is subject to the provisions of this section.

(4) For the purposes of the Act, the administrator of a simplified pension plan is the financial institution that has entered into the contract establishing the plan.

(5) The contributions made to the pension fund established in respect of a simplified pension plan, the investments in which the assets of the pension fund of the plan are invested and the returns on those contributions and investments constitute the plan's pension fund and shall not at any time constitute assets of the administrator or employer.

Employer and employee participation in SPP

(6) The participation of any employer in a simplified pension plan may be terminated by the plan administrator for failure to comply with the provisions of the contract, including failure to remit the contribution to the plan administrator within the prescribed period of time under the Model regulations.

Relevant Extracts from Common Standards and Model Law Principles

11. Pension Fund Assets

Contributions which have been deducted from members' remuneration or contributions received by the administrator from participating employers in

a multi-employer pension plan, ***must be remitted within the prescribed period of time*** to the pension fund. Such contributions are deemed to be held in trust for plan members and other plan beneficiaries.

...
Where contributions are not paid when due, the administrator shall take immediate action to obtain payment of such contributions, and may commence proceedings in a court of competent jurisdiction to obtain payment of contributions due under the pension plan, the Act or the regulation.

Model regulations

Member Contributions

Within 30 days following the month in which the sum was received or deducted.

Employer Contributions

Within 30 days following the month for which the contributions are payable.

(7) If there is more than one participating employer in a simplified pension plan, the cessation of participation by one or more employers in the plan does not constitute a termination of the plan.

(8) If an employer ceases participation in a simplified pension plan, the pension benefits of all members shall immediately vest and all benefits payable under the plan to members, or the spouses, beneficiaries or estates of members are entitled shall be paid as of the date of employer's cessation.

(9) A member of a simplified pension plan ceases to be a member of the plan in any of the following circumstances:

(a) the participation of the member's employer in the plan ceases; or

(b) the administrator terminates the plan.

Financial Institution to administer plan

(10) Each administrator of a simplified pension plan shall keep records that are sufficient to allow the ownership of any investment to be traced to the plan at any time.

(12) Each administrator shall notify each participating employer in writing of an intended amendment to the plan at least 30 days before the effective date of the amendment.

(13) If an employer's participation in the simplified pension plan ceases, the administrator shall give written notice of the cessation of the employer's participation in the plan and the effective date of the cessation to members employed by the employer within 30 days of the effective date of the cessation.

(14) If the administrator intends to terminate or wind up the simplified pension plan in whole or in part, it shall give written notice of its intention to each participating employer at least 60 days before the date of the intended termination and winding-up.

(15) The administrator shall give written notice to the Superintendent of the employers who have commenced or ceased participation in the simplified pension plan no later than each anniversary date of the plan.

3. FLEXIBLE PENSION PLANS

Issue:

The category-one principles provide a definition of, and refer to, flexible pension plans.

Background:

The CAPSA Guideline on flexible pension plans (released in April 1999) established recommendations for jurisdictions to consider when incorporating flexible pension plan legislation. The CAPSA Guidelines did not adopt all of the flexible pension plan options permitted under the *Income Tax Act* (Canada), nor did it contemplate the payment of contributions forfeited under the plan outside of the plan.

Policy Intent:

Permit any flexible benefit permitted under the *Income Tax Act*, and require payment of forfeitures from outside the plan.

Principle:

Definitions – Change

flexible pension plan provision - the terms of a pension plan under which an optional ancillary benefit is provided by optional ancillary contributions made by the member, and under which all provisions, including optional ancillary contributions and optional ancillary benefits, meet the requirements of the *Income Tax Act* (Canada).

*Note: Without this 1st change, optional ancillary contributions can be used to purchase only those ancillary benefits listed under section 17 of the Model Law principles. The second change permits the purchase of actual pension benefits that are permitted under the *Income Tax Act* (Canada)*

Add the following provision to the category-one principles, after section 17, concerning flexible pension plans:

Flexible Pension Plan Provision

- The conversion of optional ancillary contributions to optional ancillary benefits shall be done pursuant to actuarial assumptions and methods that are appropriate and in accordance with accepted actuarial practice.

- Where the optional ancillary contributions exceed the amount that can be converted to optional ancillary benefits upon retirement, termination, death or plan wind-up, the pension plan may provide for forfeiture of the unused portion.
- The employer will pay to a member the sum of the optional ancillary contributions in excess of the value of the optional ancillary benefits that may not be refunded directly to the member from the plan.

Definitions:

Add a definition:

“*optional ancillary benefit*” - means a benefit provided by optional ancillary contributions under a flexible pension plan provision.

Regulations:

Add to the Recommendations for Model Regulations 3(4) - the documents that create and support the plan - the following:

“terms and conditions relating to a flexible pension plan provision”.

Add to the Recommendations for Model Regulations 12(5) - booklet relating to plan membership - the following:

For a pension plan that has a flexible pension plan provision, the booklet shall identify:

- (a) the optional ancillary benefits available on conversion
- (b) a summary of the method used to convert optional ancillary contributions
- (c) the terms and conditions for making an election for conversion
- (d) the risk of forfeiture if there are insufficient optional ancillary benefits available at the time of conversion to completely use all the optional ancillary contributions.

Add to the Recommendations for Model Regulations 12(8) - termination statement – the following:

“If the member has made optional ancillary contributions

- (a) the amount of any balance in the member’s optional ancillary contributions account
- (b) the current cost to the member of the various options available
- (c) the maximum amount of any optional ancillary contributions that can be converted to the various options available
- (d) any limits under the *Income Tax Act* (Canada) on the use of the various options available.”

4. MEMBER LOCATION AND APPLICABLE LEGISLATION

Issue:

Determining which legislation should apply to an individual has become increasingly difficult as many employees no longer report to an establishment of their employer, but instead perform work consistently or exclusively from their home. This may not be the jurisdiction from which they are paid.

Background:

Most jurisdictions' legislation states that a person is deemed to be employed in the province in which the establishment of the employer where he reports to work is situated. If there is no such establishment, the person is deemed to be employed in the province from which his remuneration is paid. The CAPSA *Regulatory Principles for a Model Pension Law* incorporates this concept.

The provision related to member location dates back to the 1960's. The original intent was to address employees travel across two or three provinces, but do not have an actual office to which they report (e.g., travelling sales staff). In such cases, it makes sense to identify the province of employment as the one from which the remuneration was paid.

However, currently, many individuals do not report to an office of their employer (even if there is one in their locale) because they either work from home or work "in the field", but link with connect to their company through various computer system and telecommunications programs. Under the current rules, a person who spends his or her entire career located in one jurisdiction could be subject to the laws of another jurisdiction simply because it is the jurisdiction where his or her pay cheque is produced.

Employment standards regulators have noted that, for their purposes, the laws of the province in which the person is employed (i.e. providing the service) would apply. For example, an individual working out of his or her home in Saskatchewan, but paid from an office in Ontario, would be considered a Saskatchewan employee. CAPSA feels that it would be fitting for pension regulators to apply similar rules.

With respect to travelling positions (e.g., sales staff), it would be more appropriate and less complicated to apply the laws of the province in which such staff reside.

If a person is employed outside of Canada it would be appropriate to apply the rules of the jurisdiction in which he or she was last employed in Canada. However, this would only apply for a limited period, as federal tax rules will only permit out of country work to be recognized for a period of five years.

Policy Intent:

Revise section 2 of the category-one principles (concerning deemed employment) to state the following:

- (a) if the employee reports to work at an establishment of the employer, he is deemed employed in the jurisdiction in which that establishment is located;
- (b) if the employee does not report to work at an establishment of the employer, but performs most of his employment activities in a specific jurisdiction, he is deemed employed in that jurisdiction;
- (c) if the employee does not report to work at an establishment of the employer, and performs employment activities in more than one jurisdiction, he is deemed employed in the jurisdiction in which he resides; and
- (d) if the employee is temporarily employed outside of Canada, he is deemed employed in the jurisdiction in which he was last employed in Canada.

Note that these rules, with the exception of (d), do not apply to a member who is employed in included employment.

Principle:

Members should be deemed employed in the jurisdiction in which the majority of their work is performed, or if there is no such jurisdiction, where they reside.

Definitions:

None

Revision of Section 2 of Model Law**2 Application of the Act**

Delete bullet 2 and replace it with

A person who works in Canada is deemed to be employed

- (a) in the province in which the establishment of the employer is located and to which the person is required to report to work,
- (b) if there is no location to which the person is required to report, in the province in which at least 50% their employment hours are performed, or
- (c) if there is no location to which the person is required to report and less than 50% of their employment hours are spent in any jurisdiction, in the province in which they reside.

Recommendations for Regulations:

None