

1. PURPOSE OF CONSULTATION PAPER

The government is interested in amending *The Pension Benefits Regulations, 1993* (the Regulations) to establish a new unlocking rule for all pension plans, which provide pension benefits in accordance with *The Pension Benefits Act, 1992* (the Act), and for all locked-in retirement accounts (LIRA), which hold locked-in pension monies pursuant to the Act. For the purposes of this paper, this proposed new unlocking rule shall be referred to as Non-Residency Unlocking.

The proposed Non-Residency Unlocking provision will be available to persons who:

- are entitled to pension benefits pursuant to the Act,
- are no longer accruing a benefit in the pension plan¹, and
- are a non-resident of Canada.

Pension benefit entitlement matters, such as unlocking rules, are governed by the pension laws of the jurisdiction in which the member was employed at the time they terminated employment. The proposed Non-Residency Unlocking provision will be available to a person entitled to pension benefits payable in accordance with Saskatchewan pension legislation, regardless of where the pension plan is registered.

Prior to making recommendations to government regarding the details of the proposed Non-Residency Unlocking provision, Financial and Consumer Affairs Authority (FCAA) is interested in hearing from you.

2. RATIONALE FOR NON-RESIDENCY UNLOCKING

With only two exceptions, locked-in pension monies cannot be withdrawn as a lump-sum. The purpose of locking-in is to ensure that pension monies are utilized for their original intent: to provide a lifetime retirement income to pensioners and their spouses.

The two exceptions to this locking-in rule are the small benefit unlocking provision and the shortened life expectancy unlocking provision. In addition to these unlocking provisions, once a person reaches the earliest retirement age in the pension plan under which a pension entitlement has accrued, that person may transfer their pension monies to a prescribed registered retirement income fund held at a financial institution or into a variable pension benefit account held pursuant to a defined contribution pension plan (if applicable) and withdraw their monies. These unlocking provisions can be reviewed in greater detail in our bulletin titled "[Unlocking Pension Money](#)".

¹ Typically a person who is no longer accruing a benefit has terminated employment with the employer to which the pension plan applied.

2. RATIONALE FOR NON-RESIDENCY UNLOCKING (Continued)

The proposed Non-Residency Unlocking provision will be a new exception to the locking-in rule. If the following conditions are met, the proposed Non-Residency Unlocking provision will allow a person to receive a payment representing the balance of their pension monies:

- They are entitled to pension benefits and no longer accruing benefits,
- They have satisfied the plan administrator or financial institution that they are a non-resident of Canada for the purposes of the *Income Tax Act* (Canada), and
- They have provided the plan administrator or financial institution with a spousal waiver of pension benefits form.

The payment will be subject to withholding tax pursuant to the *Income Tax Act* (Canada).

A similar Non-Residency Unlocking provision exists in the pension standards legislation of most other Canadian jurisdictions. The provision allows the person to move their monies to the country where he or she chooses to reside. Accessing pension monies is difficult for persons who become non-residents of Canada because a valid social insurance number is required to open most retirement-income financial vehicles, such as a prescribed registered retirement income fund. Non-residents of Canada often do not have a valid social insurance number.

Question 1: Do you agree the government should amend the Regulations to allow for Non-Residency Unlocking?

3. MANDATORY PROVISION

Due to the difficulty a non-resident of Canada has in accessing pension monies, it is proposed that the Non-Residency Unlocking provision be mandatory for all pension plans registered pursuant to the Act and for all LIRA contracts which hold locked-in pension monies pursuant to the Act. The provision would apply only where the pension entitlements are subject to the Act.

Pension Plan: A pension plan, which provides pension benefits pursuant to the Act, **must** allow any pension entitlement to be paid in a lump-sum on a non-locked-in basis, subject to withholding tax and spousal waiver of pension benefits, if applicable, if the person entitled to those benefits has satisfied the plan administrator that he or she is a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

3. MANDATORY PROVISION (continued)

Locked-In Retirement Account: A financial institution **must** allow locked-in monies to be withdrawn in a lump-sum on a non-locked-in basis, subject to withholding tax and spousal waiver of pension benefits, if applicable, if the person entitled to those monies has satisfied the financial institution that he or she is a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

The new rules will take effect on the date set out in the Regulations.

<p>Question 2: Do you agree with this provision being mandatory?</p>

4. ADMINISTRATION OF THE PROVISION

The plan administrator or financial institution is responsible for administering the pension monies in accordance with the Act, and with the contractual provisions.

Any payment made out of a pension plan or a LIRA may be made on a non-locked-in basis if the person entitled to those benefits is a non-resident of Canada for the purposes of the *Income Tax Act* (Canada). Active members of a pension plan do not qualify for Non-Residency Unlocking until they have triggered portability rights (i.e. termination).

Non-Residency Unlocking will require the plan administrator or financial institution to ascertain whether the person is a non-resident. It is proposed that this confirmation can only be provided by the Canada Revenue Agency (CRA). To receive this written confirmation, the person would apply to obtain non-residency status by completing the federal form NR-73 and returning that form to CRA. If the person qualifies, CRA will send that person a letter confirming that they are a non-resident of Canada for purposes of the *Income Tax Act* (Canada).

To unlock the pension monies due to non-residency, the person must provide the plan administrator or financial institution with:

- CRA's confirmation that they are a non-resident of Canada; and,
- If they have a spouse, a completed spousal waiver of pension benefits form.

4. ADMINISTRATION OF THE PROVISION (Continued)

The pension standards legislation of many other Canadian jurisdictions provides that a person must be a non-resident for at least two years prior to being able to trigger the Non-Residency Unlocking provision. To allow for ease of administration and to continue to address the needs of persons entitled to benefits pursuant to the Act, the proposed Non-Residency Unlocking provision will not contain a period of time in which persons must first be a non-resident prior to making application to withdraw pension monies pursuant to the Non-Residency Unlocking provision.

If the plan administrator or financial institution is satisfied that the person qualifies for the withdrawal, the pension monies must be unlocked. Once unlocked, the funds must be paid to the person, subject to any withholding taxes.

Question 3: Do you agree with the requirements (i.e. the confirmation letter from CRA and the spousal waiver form, if applicable) to provide proof to the plan administrator or financial institution of non-residency?

Question 4: Are there any reasons why you feel that a person should be required to be a non-resident of Canada for a period of time (such as two years) before they are allowed to unlock?

Question 5: What, if any, additional information or requirements would you suggest?

5. COMMENTS

We are interested in hearing from you. In addition to providing your comments respecting the questions found in this paper, please feel free to provide any additional and relevant information.

Your comments may be disclosed to others who have provided feedback, or any other interested parties, during and after the consultation process. Your personal information will not be disclosed without your express written consent; however, the identity of an organization may be made public in connection with its submission or comments. *The Freedom of Information and Protection of Privacy Act* of Saskatchewan will apply to any submission received by our office. Comments should be submitted by June 20, 2014.

You can email your comments to Tami Dove, Senior Policy Analyst, Pensions Division, Financial and Consumer Affairs Authority at tami.dove@gov.sk.ca.

Alternatively, comments can be mailed or faxed to:

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