Saskatchewan Financial
Services Commission
Pensions Division

UNLOCKING PENSION MONEY

Introduction

Section 29 of *The Pension Benefits Act, 1992* (the Act) provides that a plan member entitled to a pension may not withdraw, commute or surrender the pension. Simply put, locked-in pension money must be used to provide the pension plan member with retirement income. Furthermore, in accordance with Section 63 of the Act, locked-in pension money may not be assigned, charged, alienated or anticipated and is exempt from execution, seizure or attachment.

Locking in continues to apply to pension money transferred from a registered pension plan to a locked-in retirement account (LIRA) in accordance with Section 29 of *The Pension Benefits Regulations, 1993 (the Regulations)*.

No one has the authority to grant an exception to the locking-in rules regardless of the plan member's circumstances. The legislation does not provide a release of money to alleviate financial hardship. It also does not provide a release of money when a plan member or LIRA contract holder becomes a non-resident of Canada. However, the legislation does allow a payment in cash in lieu of a pension under 10 circumstances. Those circumstances are described below.

This bulletin has no legal authority. The Act and the Regulations should be used to determine specific requirements.

1. Small Benefit Rule Under a Pension Plan

Subsection 39(1) of the Act provides that a pension plan may make a lump sum payment in lieu of a pension where the amounts involved are too small to warrant being administered as a pension. Those amounts are established under subsection 35(2) of the Regulations:

> "35(2) For the purposes of subsection 39(1) of the Act:
>
> (a) the maximum amount of the commuted value is 20% of the Year's Maximum Pensionable Earnings in effect in the year in which the payment occurs; or
>
> (b) the maximum amount of the annual pension is 4% of the Year's Maximum Pensionable Earnings in effect in the year in which the payment occurs."

Clause 35(2)(b) of the Regulations does not apply to a defined contribution plan where a plan member terminates employment prior to becoming eligible to commence a pension. In this case, the small benefit amount would be calculated using clause 35(2)(a).

A plan is not required to have the small benefit rule. However, if the plan has the provision, the prescribed maximum amounts must be used. The plan administrator is responsible for ensuring the rule is applied properly.

If a plan has the small benefit rule, the plan can be worded such that the plan administrator can require plan members to take a lump sum payment where the conditions in subsection 39(1) of the Act are met.

The Act and Regulations do not prohibit the commuted value under the small benefit rule to be transferred to an RRSP rather than paid in cash. However, the plan administrator should ensure that this transfer is allowed under the *Income Tax Act* (Canada).

The Year's Maximum Pensionable Earnings (YMPE) is a figure determined under the Canada Pension Plan on an annual basis. The YMPE for 2012 is $50,100. Therefore, if a plan member terminates employment or retires, the administrator could make a payment in lieu of a pension where the commuted value of the member's pension under a defined benefit provision or the total value of a member's defined contribution account does not exceed $10,020. If the member is eligible to commence a pension, then the administrator could make a lump sum payment if the member's annual pension is less than $2,004. The YMPE in effect in the year that the payment occurs is used for purposes of the small benefit rule.

2. Small Benefit Rule Under a LIRA

Subsection 29(8.1) and (8.2) of the Regulations permit a LIRA contract issuer (the issuer) to make a lump sum payment where the total value of an individual's locked-in money is too small to warrant being administered as a pension:

> "29(8.1) Notwithstanding subsection (4), but subject to subsection (8.2), the contract may provide for the withdrawal of the locked-in money as a lump sum if the amount of locked-in money in the contract does not exceed 20% of the Year's Maximum Pensionable Earnings in effect in the year in which the withdrawal occurs.
>
> (8.2) The issuer shall not permit a withdrawal pursuant to subsection (8.1) unless the issuer is satisfied that the owner has no other locked-in money."

Subsection 29(8.1) is permissive, not mandatory. The issuer is responsible for administering the small benefit rule and must ensure that the terms of the contract provide for the release of locked-in money pursuant to the small benefit rule.

Subsection 29(8.2) requires the issuer to be satisfied that the LIRA owner has declared all other locked-in money for purposes of applying the small benefit rule under subsection 29(8.1). This includes locked-in money that may be subject to the pension legislation of other jurisdictions. A signed written statement from the owner, for instance, should be sufficient to release the money.

In determining the amount of an individual's total locked-in money, the issuer must include amounts in all LIRAs held by the individual, as well as any deferred pension entitlements the individual has in a pension plan. Such an entitlement is created when a plan member terminates membership in a pension plan, and does not transfer the pension entitlement out of the plan.

The YMPE is a figure determined under the Canada Pension Plan on an annual basis. The YMPE for 2012 is $50,100. Therefore, a LIRA contract could provide for the withdrawal of the locked-in money that is subject to Saskatchewan pension legislation as a lump sum if the total amount of an individual's locked-in money from all sources does not exceed $10,020.

Rather than make a lump sum payment under the small benefit rule, the issuer could, but is not required to, transfer the payment to an RRSP, if requested by the owner. However, the issuer should ensure that this transfer is allowed under the *Income Tax Act* (Canada).

The annual pension limit under subsection 39(1) of the Act can't be applied to a LIRA contract.

3. Shortened Life Expectancy

Subsections 39(2) and (3) of the Act provide that funds held in a pension plan or a LIRA may be commuted to cash if the member or former member has a condition that is likely to considerably shorten that person's life expectancy. The individual must provide the plan administrator or issuer of the LIRA contract with medical evidence to substantiate the claim.

> "39(2) A plan may provide that, if a person entitled to the benefit has a condition that is likely to shorten considerably the person's life expectancy, the person may, before payment of the pension commences, elect to convert, on the prescribed basis, the pension or part of the pension to a payment or series of payments for a fixed term to the person.
>
> (3) Where a benefit has been transferred to a prescribed RRSP, subsection (2) applies to the RRSP to which the benefit has been transferred.
>
> (4) The condition mentioned in subsection (2) must be certified by a duly qualified medical practitioner who has been approved by the administrator."

Subsection 29(8) of the Regulations requires the LIRA issuer to obtain a spousal waiver before commuting the funds. The prescribed waiver is Form 3, which can be found in the Appendix to the Regulations.

Although the Act and Regulations do not require it, it is recommended that plan administrators obtain a spousal waiver prior to commuting the funds from a pension plan.

The pension plan administrator or the LIRA issuer is responsible for the administration of the shortened life expectancy provision. The government cannot authorize the release of the money.

4. Pre-Retirement Death Benefits Paid to a Surviving Spouse

Where the death of a plan member or LIRA contract owner occurs prior to retirement, the surviving spouse is entitled to the pre-retirement death benefit payable under the pension plan or the LIRA contract. If there is no surviving spouse, or the spouse has waived entitlement to the pre-retirement death by signing a prescribed waiver before the date of death, the death benefit is paid as a lump sum to a designated beneficiary. If there is no designated beneficiary, the death benefit is paid as a lump sum to the estate of the deceased individual.

Subsection 33(3) of the Act and subsection 29(4) of the Regulations provide that the surviving spouse may elect to receive a lump sum payment in lieu of a pension or a transfer to a locked-in retirement arrangement provided under Section 32 of the Act.

For further details concerning the pre-retirement death benefit payable under a pension plan or a LIRA contract, please refer to our bulletins, *Understanding the Pension Benefits Act, 1992 – A Guide for Members* or *Retirement Options*.

5. Registered Retirement Income Fund

Under certain circumstances, pension money may be transferred to a Registered Retirement Income Fund (RRIF) that complies with the requirements of Section 29.1 of the Regulations. There is no limit on the amount of money that may be withdrawn from a prescribed RRIF.

An individual may transfer money to a prescribed RRIF from a LIRA or from a pension plan, if the pension plan permits such a transfer. With the exception of the situation described in the next paragraph, money cannot be transferred to a prescribed RRIF prior to attaining age 55, unless the pension plan from where the money originated provides for retirement at an earlier age. As well, legislation requires the consent of the spouse of the individual before money can be transferred.

Where a plan member or former plan member passes away leaving a surviving spouse, that spouse can establish a prescribed RRIF at any age.

For further information concerning establishing a prescribed RRIF, please refer to our bulletin *Retirement Options*.

6. Variable Benefit Under a Defined Contribution Plan

Under certain circumstances, pension money may be used upon retirement to establish a Variable Benefit Account that complies with the requirements of Section 29.2 of the Regulations. There is no limit on the amount of money that may be withdrawn from a Variable Benefit Account.

A member or former member of a defined contribution pension plan that offers a Variable Benefit may establish a Variable Benefit Account when eligible to retire under the plan provisions. The spouse must provide consent to the transfer and waive entitlement to the post-retirement survivor benefit provided under Section 34 of the Act. Contact the administrator of your pension plan to determine if your plan offers a Variable Benefit upon retirement.

For further information concerning the Variable benefit, please refer to our bulletins *Highlights of The Pension Benefits Amendment Regulations, 2006* and *Retirement Options*.

7. Partial Refund of Member Contributions

Subsection 29(4) of the Act permits a plan to pay a refund of up to 50% of a member’s contributions required to be made by the member as of December 31, 1993, together with interest accrued to that day. The refund is available only on the termination of membership in the plan prior to retirement. The refund may reduce the pension payable to the member.

Please note that a pension plan is not required to offer a partial refund of member contributions. The refund option must appear as part of the pension plan text. As well, the provision does not apply to employer contributions or to member contributions made, and interest credited, after December 31, 1993.

8. Excess Member Contributions

Section 31 of the Act provides that where a member of a defined benefit pension plan is required to make contributions to the plan, those contributions may not fund more than fifty per cent of the cost of the commuted value of the member's pension. This is known as the 50 per cent rule, and is applied upon termination of membership in the plan.

The plan administrator is responsible for calculating the commuted value of the member's defined benefit pension at termination. If it is found that member contributions exceed 50 per cent of that amount, then the excess contributions may be returned to the member or transferred to a registered retirement savings plan, another pension plan or be used to purchase a deferred or immediate pension.

Please refer to our bulletin, *Understanding The Pension Benefits Act, 1992 - A Guide for Members* for additional information concerning the 50 per cent rule.

9. Maintenance Enforcement

The Act and Regulations permit the attachment of pension funds by the Family Justice Services Branch of the Ministry of Justice and Attorney General as a means of enforcing court-ordered maintenance payments. Please refer to our bulletin, *Enforcement of Maintenance Orders* for further details.

10. Benefits in Excess of the Income Tax Act Limits

The *Income Tax Act* (Canada) provides significant tax advantages to the participants of a registered pension plan. To control the amount of the foregone tax, the *Income Tax Act* limits contributions to, and benefits payable from, pension plans.

To avoid a conflict between federal and provincial legislation, Section 42 of the Regulations unlocks money that must be paid as cash pursuant to the *Income Tax Act:*

> "42(1) Where:
>
> (a) a plan provides a benefit or allocates surplus funds with respect to a person entitled to a benefit and the benefit or surplus fund allocation is in excess of the maximum benefit or contribution limit applicable to the plan pursuant to the *Income Tax Act* (Canada); or
>
> (b) the commuted value of a benefit is in excess of the maximum amount that may be transferred to another plan or to an RRSP pursuant to the *Income Tax Act* (Canada);
>
> the amount of that benefit, surplus allocation or commuted value that is in excess of that maximum limit is exempt from subsections 29(1) and (2) of the Act and shall not be treated as being locked-in for the purposes of these regulations."

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