

Permitting Direct Payments from Defined Contribution Pension Plans to Retirees: Description of Proposed Regulations for Variable Benefits

In the *2017 Ontario Budget*, the government announced its intention to develop regulations to facilitate the implementation of the variable benefits (VBs) provisions in the *Pension Benefits Act* (PBA). The initiative is part of Ontario's plan to expand and modernize the legislative and regulatory framework related to defined contribution (DC) pension plans.

Currently, plan members who belong to a pension plan that provides DC benefits must transfer the balance in their DC account to a financial institution to start receiving their retirement income. The VB provisions in the PBA would permit, but do not require, an administrator of a pension plan with DC provisions to offer Life Income Fund (LIF)-like payments directly from the plan through the establishment of a VB account (VBA).

VBs are considered 'variable' because retired members electing a VB pension would be able to determine how much income is withdrawn annually, subject to a minimum withdrawal amount required by the *Income Tax Act* (ITA) and a maximum withdrawal amount set out in the regulations to the PBA. Retired members who elect to receive a VB pension could continue to benefit from the investment expertise of pension fund managers and from cost efficiencies due to the pension plan's economies-of-scale.

A. Summary of Provisions regarding Variable Benefits in the PBA:

It is intended that the following sections of the PBA would be proclaimed into force once the proposed regulations described in this posting are filed:

- Section 39.1, which sets out the main features of VBs including:
 - the requirement that a pension plan administrator that chooses to offer a VB pension from the DC provision of their plan do so in accordance with the requirements and restrictions set out in the regulations;
 - the requirement for a joint and survivor waiver;
 - transfer options for transfers in and out of a VBA; and
 - the steps required to exercise an entitlement to transfer.

- Section 39.1.1, which sets out the death benefit provision upon the death of the retired member including:
 - the order of entitlement to the death benefit;
 - the option for the spouse to transfer the death benefit;
 - the option for a spouse who is a specified beneficiary to elect to continue receiving a VB pension; and

- the duty of the administrator to send an annual statement if the specified beneficiary elects to continue receiving a VB pension.
- Section 39.1.2, which provides for the payment of the death benefit to the designated beneficiary or estate upon the death of a specified beneficiary who was receiving a VB pension.

It should be noted that the family law regulations related to VBs are intended to be added in the future. The Ministry of Finance encourages stakeholders to provide feedback on the proposed regulations as detailed below as well as on any areas that may require consideration. Comments on these proposals should be received by the Ministry of Finance by **May 4, 2018**.

B. Description of Proposed Regulations

1. Prescribed Requirements and Restrictions to Authorize Variable Benefit Pension [PBA ss. 39.1(2), (2.2)]

It is intended that the regulations would require that plan administrators wishing to offer a VB pension from the DC provision of their pension plans would be subject to restrictions and requirements as follows:

- Where a member elects to receive a VB pension, the administrator must establish a VBA into which the entire balance of the individual's DC account is transferred.
- Within the 60 days prior to establishing a VBA, a waiver of joint and survivor pension benefits, on a form approved by the Superintendent, or in a certified copy of a domestic contract, must be delivered to the administrator.
- Within 30 days after establishing a VBA, the administrator would be required to provide a statement ("Initial Statement") to the retired member. See section C for the intended content of the Initial Statement.
- Upon receipt of the Initial Statement, the retired member would be required to notify the administrator about:
 - the amount of income he or she chooses to be paid for the current year (subject to a minimum and maximum);
 - the frequency of payments; and
 - the method of payment.
- The frequency and method of payment chosen in the first year would become the default for subsequent years should the retired member not make a new election.

- If the retired member does not choose an amount during or after the first year, the minimum amount determined for the purposes of a Registered Retirement Income Fund (RRIF) under the ITA would be the default payment.
- The maximum amount a retired member could receive in a year would be the maximum annual payment permitted for a LIF under Schedule 1.1 of Regulation 909.

2. *Prescribed Requirements for Transfers In [s. 39.1(3)]*

It is intended that the regulations would allow transfers from the following retirement savings arrangements into a VBA:

- LIFs (Schedule 1 and 1.1);
- Locked-in retirement accounts (LIRAs); and
- Locked-in Retirement Income Funds (LRIFs).

It is intended that the regulations would also require spousal consent to transfer an amount into a VBA and that the administrator would provide a statement confirming the transfer to the retired member. See section C for the intended content of the Transfer Statement (Transfers In).

3. *Prescribed Requirements for Transfers Out and Cessation of Variable Benefit Payments [ss. 28(1); 39.1(4), (6), (7), (8), (9)]*

It is intended that regulations would set out the vehicles into which a retired member or specified beneficiary who is receiving a VB pension may transfer amounts. These vehicles are:

- LIFs (only Schedule 1.1);
- LIRAs; and
- Life annuities, as long as an insurance contract providing an annuity meets the conditions set out in s. 22 of Regulation 909.

These same vehicles would be used to accept transfers of funds if a plan ceases to offer VBs.

It is intended that the regulations would also require that:

- the direction be delivered to the administrator on a form approved by the Superintendent;
- spousal consent is required, if applicable; and

- the administrator must comply with the direction within 60 days after receiving the direction.

It is intended that the regulations would also require that when an amount is transferred out of the plan or the plan stops offering VBs, the minimum amount for that year must be paid out of the VBA, as required by the ITA.

It is intended that the regulations would require the administrator to provide a statement to the retired member or specified beneficiary, as applicable, within 60 days after making the transfer. See section C for the intended content of a Transfer Statement (Transfers Out).

Similarly, it is intended that the regulations would require the administrator to provide a statement to the retired member or specified beneficiary, as applicable, within 60 days after making the transfer, when a plan ceases to provide VBs. See section C for the intended content of the Statement upon a Plan Ceasing to Provide VBs.

4. Annual Statement to Retired Member [s. 27(2)] and Annual Statement to Specified Beneficiary [s. 39.1.1(10.1)]

Subsection 27(2) of the PBA requires an administrator to send a statement to retired members. Instead of s. 40.2 of Regulation 909, which requires biennial statements to retired members, it is intended that the VB regulations would require that the administrator provide a statement annually within 60 days after year end to a retired member receiving a VB pension. See section C for the intended content of the Annual Statement.

It is also intended that an administrator would be required to provide an annual statement to a specified beneficiary who continues to receive a VB pension. Similar to the annual statement to retired members, it is intended that regulations would require the administrator to provide the annual statement to a specified beneficiary within 60 days of year end. See section C for specific content of the Annual Statement to a Specified Beneficiary.

5. Death Benefit [ss. 28(1); 39.1.1(7), (10)]

Upon the death of the retired member, it is intended that regulations would require the administrator to provide a statement to the person entitled to receive the balance in the VBA, within 60 days after being notified of the death of the retired member. See section C for the intended content of the Statement upon Death.

The spouse, beneficiary or personal representative (estate) of the retired member, as applicable, would be required to send to the administrator a direction instructing the administrator how to pay the death benefit. Similar to s. 43(2) of Regulation 909, it is

intended that regulations would require the spouse, beneficiary or personal representative (estate), as the case may be, to deliver the direction within 90 days from the date the administrator first receives notice of the death.

It is intended that regulations would require the same period of 90 days to deliver the direction if a spouse who is a specified beneficiary elects to continue receiving a VB pension.

C. Description of Various Statements

1. Initial Statement:

It is intended that the prescribed content for the Initial Statement would include:

- the name of the pension plan and its registration number;
- the retired member's name and date of birth;
- the name of, and contact information for, the administrator or their designated service provider;
- the name of the retired member's spouse, if applicable and whether the spouse is designated as the retired member's specified beneficiary;
- the name of any person designated as a beneficiary;
- a description of the benefits provided on the death of the retired member;
- the account balance upon establishment of the VBA;
- the amount and nature of the fees that will be charged to the VBA;
- a statement that the administrator will not commence payments until the required information is received from the retired member; and
- information about the election that the retired member must make, including:
 - i. the minimum and maximum amounts payable during the year;
 - ii. the options for the method and frequency of payments;
 - iii. the default amount if the retired member does not elect an amount;
 - iv. how the retired member may make an election, and any deadline for making it;
 - v. how the retired member may make changes to the amount, method or frequency of payments, and the effective date of the changes;
 - vi. how to change or designate a beneficiary or specified beneficiary.

2. Annual Statement:

It is intended that the prescribed content for the Annual Statement to the Retired Member would include:

- the name of the pension plan and its registration number;
- the retired member's name and date of birth;

- the name of, and contact information for, the administrator or their designated service provider;
- the period covered by the statement;
- the name of the retired member's spouse, if applicable, and whether the spouse is designated as the retired member's specified beneficiary;
- the name of any person designated as a beneficiary;
- a description of the benefits provided on the death of the retired member;
- the date the VB pension commenced;
- the account balances at the beginning and end of the year;
- the net income earned by the VBA during the year;
- the total of the amounts paid as a VB pension to the retired member during the year;
- any amounts transferred to the VBA during the year and their source;
- the amount and nature of the fees charged to the VBA during the year;
- information about any amendments made to the plan text during the period covered by the statement;
- information about any changes to the VBA resulting from the retired member's election to change the amount, frequency or method of payment; and
- information about the election that the retired member may make, including:
 - i. the minimum and maximum amounts payable during the year;
 - ii. how the retired member may make an election, and any deadline for making it;
 - iii. the default amount, method and frequency of payment if the retired member does not make an election;
 - iv. the options for the method and frequency of payments;
 - v. how the retired member may make changes to the amount, method or frequency of payments, and the effective date of the changes; and
 - vi. how to change or designate a beneficiary or specified beneficiary.

It is intended that the prescribed content for the Annual Statement to the Specified Beneficiary would include:

- the name of the pension plan and its registration number;
- the specified beneficiary's name and date of birth;
- the name of, and contact information for, the administrator or their designated service provider;
- the period covered by the statement;
- the name of any person designated as a beneficiary;
- a description of the benefits provided on the death of the specified beneficiary;

- the date on which the specified beneficiary commenced receiving a VB pension;
- the account balances at the beginning and end of the year;
- the net income earned by the VBA during the year;
- the total of the amounts paid as a VB pension to the specified beneficiary during the year;
- the amount and nature of the fees charged to the VBA during the year;
- information about any amendments made to the plan text during the period covered by the statement;
- information about any changes to the VBA resulting from the specified beneficiary's election to change the amount, frequency or method of payment; and
- information about the election that the specified beneficiary may make, including:
 - i. the minimum and maximum amounts payable during the year;
 - ii. how the specified beneficiary may make an election and any deadline for making it;
 - iii. the default amount, method and frequency of payment if the specified beneficiary does not make an election;
 - iv. the options for the method and frequency of payments;
 - v. how the specified beneficiary may make changes to the amount, method or frequency of payments, and the effective date of the changes; and
 - vi. how to change or designate a beneficiary.

3. Statement upon Death to Spouse, Beneficiary or Personal Representative:

It is intended that the prescribed content for the Statement upon Death would include:

- the name of the pension plan and its registration number;
- the retired member's name and date of birth;
- the name of, and contact information for, the administrator or their designated service provider;
- the date the retired member commenced the VB pension;
- the account balances at the beginning of the year and at date of death;
- the net income earned by the VBA during the year up until date of death;
- the total of the amounts paid as a VB pension during the year;
- any amounts transferred to the VBA during the year and their source;
- the amount and nature of the fees charged to the VBA during the year;
- information about the transfer options available to the spouse;

- if the spouse qualifies as a specified beneficiary, information about the option to continue the VB pension, including how to elect or change the amount, method and frequency of payments; and
- how the recipient is to make an election, if applicable, and any deadline for making it.

4. Transfer Statement:

It is intended that the prescribed content for the Transfer Statement (Transfers In) would include:

- the name of the pension plan and its registration number;
- the retired member's name and date of birth;
- the name of, and contact information for, the administrator or their designated service provider;
- the date the VB pension began;
- the VBA balance at start of year and on the date the funds were transferred into the VBA;
- net income earned during the year up until the date funds were transferred into the VBA;
- the amount and nature of the fees charged to VBA during the year up until the date funds were transferred into the VBA;
- the amount transferred into the VBA, the source of those funds and the balance in the VBA following transfer; and
- the minimum and maximum amounts that may be paid out of the VBA during the remainder of year.

It is intended that the prescribed content for the Transfer Statement (Transfers Out) would include:

- the name of the pension plan and its registration number;
- the retired member's name and date of birth or the specified beneficiary's name and date of birth, as applicable;
- the name of, and contact information for, the administrator or their designated service provider;
- the date the VB pension began;
- the account balances at the beginning of the year and on the date of transfer;
- net income earned during the year up until date of the transfer;
- the amount and nature of the fees charged to the VBA during the year up until the date the funds were transferred out of the VBA;
- the amount remaining in the VBA after the date the funds were transferred out;
- information about where the funds were transferred to;

- the amount remaining to be paid out for the year; and
- a statement that when funds are transferred out of the VBA, the minimum amount, as required by the ITA, must be paid out.

5. Statement upon a Plan Ceasing to Provide VBs:

It is intended that the prescribed content of the Statement upon a Plan Ceasing to Provide VBs would contain the following information:

- the name of the pension plan and its registration number;
- the retired member's name and date of birth or the specified beneficiary's name and date of birth, as applicable;
- the name of, and contact information for, the administrator or their designated service provider;
- the date the VB pension began;
- the account balances at the beginning of the year and on the date of transfer;
- the net income earned during the year up to the date the funds were transferred from the retired member's VBA ;
- information about where the funds were transferred to; and
- the amount and nature of the fees charged to the VBA during the year up to the date the funds were transferred out of the VBA.