

DIRECTIVE NO. 17

Issued under the Pension Benefits Act, 1997, effective January 1, 2007

DATED at St. John's, Newfoundland the 20th day of September , 2007

WINSTON MORRIS
Superintendent of Pensions

Locked-in Retirement Income Requirements

1. In this Directive,
 - (a) “financial institution” means the underwriter, depository or issuer of a LRIF;
 - (b) “fiscal year” means a fiscal year of the LRIF;
 - (c) “LRIF” means a registered retirement income fund established in accordance with the *Income Tax Act* (Canada), known as a Locked-in Retirement Income Fund, that is locked-in in accordance with the Regulations and meets the conditions set out in this Directive;
 - (d) “life annuity contract” means an arrangement made to purchase through a person authorized under the laws of Canada or a province to sell annuities as defined in the *Income Tax Act* (Canada), a non-commutable pension, in accordance with Directive No. 6 that will not commence before that person attains the age of 55 years, or, if that person provides evidence to the satisfaction of the financial institution that the plan or any of the plans from which the money was transferred provided for payment of the pension at an earlier age, that earlier age;

- (e) “list” means the appropriate list established and maintained under section 18 of the Regulations;
 - (f) “owner” means the member or former member of a pension plan who has made a transfer pursuant to section 40 of the Act to a LRIF and, unless otherwise stated, includes the principal beneficiary or former principal beneficiary of the member or former member if the principal beneficiary or former principal beneficiary is entitled to a pension benefit as a result of the death of the member or former member or as a result of marriage breakdown;
 - (g) “principal beneficiary” means the spouse of a member or former member, or where the member or former member has a cohabiting partner, the member or former member’s cohabiting partner as defined in the Act.
2. A financial institution must file with the Superintendent a specimen certified copy of a Locked-in Retirement Income Fund and any amendments for review and approval.
 3. The Superintendent will maintain a list of financial institutions approved by the Superintendent as offering acceptable Locked-in Retirement Income Fund products.
 4. The conditions on which a transfer of locked-in money to a Locked-in Retirement Income Fund under section 40 of the Act and any subsequent transfer to a financial institution of money so transferred are to be made as set out in this Directive.
 5. A Locked-in Retirement Income Fund may be purchased with respect to an entitlement to a pension under a pension plan by:
 - (a) a member or former member of the pension plan who has obtained the written consent of his or her principal beneficiary , if any; or
 - (b) the principal beneficiary or former principal beneficiary of a member or former member if the principal beneficiary or former principal beneficiary is entitled to a pension benefit as a result of the death of the member or former member or as a result of marriage breakdown.
 6. An administrator of a pension plan shall not effect a transfer to a financial institution unless the administrator has
 - (a) ascertained that the financial institution’s name and Locked-in Retirement Income Fund are currently on the list of approved contracts; and

- (b) advised the financial institution in writing that, subject to Part VI of the Act, no withdrawal, commutation or surrender of money is permitted.

Establishing the Fund

- 7. A contract establishing a Locked-in Retirement Income Fund shall incorporate the applicable definitions set out in the Act and Regulations, section 1 of this Directive and shall include the following provisions:
 - (a) the name and address of the financial institution providing the Fund;
 - (b) description of the owner's power, respecting investment of the assets in the fund;
 - (c) state that the owner agrees not to assign, charge, anticipate or give as security money payable under a Locked-in Retirement Income Fund;
 - (d) describe the method for determining the value of the Fund. This valuation method must be the one that is to be used to establish the fund's value upon the death of a person entitled to payment, upon the establishment of a life annuity or upon a transfer of assets from the fund; and
 - (e) the fiscal year of the Fund must end on the 31st day of December and must not exceed twelve months.

Periodic Payments out of the Fund

- 8. A Locked-in Retirement Income Fund specimen contract shall provide as follows:
 - (a) payment out of the Locked-in Retirement Income Fund must not begin before the earlier of age 55 or the earliest date on which the member could receive a pension benefit under the Act or the originating pension plan from which money was transferred and not later than the last day of the second fiscal year;
 - (b) the owner must decide the amount to be paid out of the Fund each year, either at the beginning of the fiscal year of the Fund or at another time agreed to by the financial institution and the decision expires at the end of the fiscal year to which it relates;
 - (c) if the owner does not decide the amount to be paid out of the Fund for a year, the minimum amount determined under paragraph (h) shall be deemed to be the amount paid;

- (d) the amount of income paid out of the Locked-in Retirement Income Fund during a fiscal year must not exceed “maximum”, being the greatest of:
- (i) the income, gains and losses earned from the time the contract was established to the end of the most recently completed fiscal year and, with respect to any money in the contract that is derived directly from money transferred from a LIF, the income, gains and losses earned in the final complete fiscal year of the LIF under the LIF, less the sum of all income paid to the owner from the contract;
 - (ii) the income, gains and losses earned in the immediately previous fiscal year, and
 - (iii) if the payment is being made in the fiscal year in which the contract was established or in the fiscal year immediately following its establishment, 6% of the fair market value of the contract at the beginning of that fiscal year.
- (e) subject to paragraph (f), an owner is entitled to receive additional temporary income where:
- (i) the total pension income received by the owner for the calendar year in which the application is made, calculated as “B” under paragraph (f), is less than 40% of the year’s maximum pensionable earnings (YMPE) under the *Canada Pension Plan* (CPP) for the calendar year in which the application is made; and
 - (ii) the owner has not reached his or her 65 birthday at the beginning of the fiscal year in which he or she makes application for additional temporary income.
- (f) the amount of additional temporary income paid out of the LRIF in a fiscal year must not exceed the “maximum” in the following formula:

$$\text{Maximum Temporary Income} = A - B$$

in which

A = 40% of the YMPE under the CPP for the calendar year in which an application is made.

B = The total pension income to be received by the owner from all LIFs, LRIFs, Life Annuities and pension plans governed by Newfoundland pension benefits legislation or established by or governed by an Act of Canada or a Province, except income from a pension under the *Canada Pension Plan*

- (g) An application for additional temporary income under paragraph (e) shall be:
- (i) on a form approved by the Superintendent,
 - (ii) where the owner is a former member of a pension plan, accompanied by the written consent of the principal beneficiary of the former member, and
 - (iii) submitted to the financial institution at the beginning of the fiscal year of the Fund, unless otherwise permitted by the financial institution.
- (h) the amount of income paid out of the Locked-in Retirement Income Fund during a fiscal year must not be less than the minimum amount prescribed for registered retirement income funds under the *Income Tax Act* (Canada);
- (i) for the initial year of the Fund, the “maximum” in paragraphs (d) and (f) shall be adjusted in proportion to the number of months in that fiscal year divided by 12, with any part of an incomplete month counting as one month; and
 - (j) if a part of the Fund purchased at the beginning of a fiscal year corresponds to sums transferred directly or indirectly during the same year from another Locked-In Retirement Income Fund or Life Income Fund of the purchaser, the “maximums” in paragraphs (d) and (f) shall be deemed to be zero.

Withdrawals from the Fund

9. The contract may provide for the withdrawal of money as a lump sum or series of payments if a medical practitioner certifies that due to mental or physical disability the life expectancy of the owner is likely to be shortened considerably, but where the owner is a former member of a pension plan such payment may only be made if the principal beneficiary of the former member has waived the joint and survivor pension entitlement in a form and manner provided by the Superintendent.

10. The contract shall provide for a lump sum payment equal to the value of the entire contract on application by the owner to the financial institution for payment if, at the time the owner signs the application,
 - i) the owner has reached the earlier of age 55 or the earliest date on which the owner would have been entitled to receive a pension benefit under the plan from which money was transferred, and
 - ii) the value of all assets in all LIFs, LRIFs and LIRAs owned by him or her and governed by Newfoundland pension benefits legislation is less than 40 percent of the YMPE under the CPP for that calendar year.
11. An application under section 10 shall be
 - a) on a form approved by the Superintendent, and
 - b) where the owner is a former member of a pension plan, accompanied by a waiver of the principal beneficiary of joint and survivor pension entitlement, in the form and manner provided by the Superintendent.

Transferring Assets from the Fund

12. The owner of the Locked-in Retirement Income Fund may transfer any or all the assets in it,
 - (a) to another Locked-in Retirement Income Fund;
 - (b) to a Life Income Fund;
 - (c) to purchase an immediate life annuity that meets the requirements of the Superintendent; or
 - (d) before December 31st in the year in which the purchaser reaches 71 years of age, to a Locked-In Retirement Account.
13. In the contract establishing the Fund, the financial institution must agree to make such a transfer within thirty days after the owner requests it. This does not apply with respect to the transfer of assets held as securities whose term of investment extends beyond the thirty day period.
14. If the assets in the Locked-in Retirement Income Fund consist of identifiable and transferrable securities, the financial institution may transfer the securities with the consent of the owner.

Death Benefits

15. On the death of a former member who has a principal beneficiary, the surviving principal beneficiary, or where there is no surviving principal beneficiary or the surviving principal beneficiary had waived entitlement in the form and manner required by the Superintendent, a designated beneficiary, or where there is no designated beneficiary, the estate of the member or former member is entitled to receive a lump sum payment of the full value of the contract.
16. Where the owner is not a former member the full value of the contract shall be paid to the designated beneficiary or where there is no designated beneficiary, to the owner's estate.

Amending the Fund

17. Subject to section 18 the financial institution providing the Fund shall not amend the contract except where the financial institution has given the owner of the Fund at least ninety days notice of a proposed amendment.
18. An amendment that would result in a reduction in the owner's benefits under the contract is permitted only where
 - (a) the financial institution is required by law to make the amendment; and
 - (b) the owner is entitled to transfer the balance in the Locked-in Retirement Income Fund under the terms of the contract that existed before the amendment is made.
19. When making an amendment under section 18 the financial institution shall,
 - (a) notify the owner of the Fund of the nature of the amendment; and
 - (b) allow the owner at least ninety days after the notice is given to transfer all or part of the balance in the Fund.
20. Notice under sections 17 and 19 shall be sent by registered mail to the owner's address as set out in the records of the financial institution.

Information to be provided by the Financial Institution

21. In the contract establishing the Locked-in Retirement Income Fund, the financial institution must agree to provide the information described in section 22 to the person indicated.

22. At the beginning of each fiscal year, the following information must be provided to the owner:
 - (a) the sums deposited, the accumulated earnings, the payments made out of the Fund and the fees charged against it during the previous fiscal year;
 - (b) the balance in the Fund;
 - (c) the minimum amount that must be paid out of the Fund to the owner during the current fiscal year; and
 - (d) the maximum amount that may be paid out of the Fund to the owner during the current fiscal year.
23. If the balance of the Fund is transferred as described in section 12, the owner must be given the information described in section 22 determined as of the date of the transfer.
24. If the owner dies, the person entitled to receive the balance in the Fund must be given the information described in section 22, determined as of the date of the owner's death.
25. This Directive replaces Directive No. 17 last amended December 13, 2001 and shall take effect on January 1, 2007.