

Proposed Amendment to Regulation 909: Exemption from the 30 per cent rule for Pension Investment in Infrastructure

A. Background

In the *2013 Ontario Economic Outlook and Fiscal Review*, the Province announced that it would propose regulations that would allow pension plans to further invest in local infrastructure by exempting plans' investments in certain Ontario public infrastructure projects from the "30 per cent" pension investment rule. This posting describes the proposed amendments to Regulation 909 under the *Pension Benefits Act* (PBA) to implement this commitment.

The 30 per cent rule is one of the quantitative limits contained in the federal pension investment rules, which Ontario incorporates by reference. This rule states: "The administrator of a plan shall not, directly or indirectly, invest the moneys of the plan in the securities of a corporation to which are attached more than 30 per cent of the votes that may be cast to elect the directors of the corporation."

It is proposed that a plan administrator would be able to invest in more than 30 per cent of the voting shares of an infrastructure corporation. An infrastructure corporation would be an entity defined under the Regulation 909 of the PBA. Requirements that would apply to the plan administrator and the infrastructure corporation are described below.

The investment rules currently have exemptions from the 30 per cent rule for three types of corporations: real estate, resource, and investment corporations. These specific corporations also have certain exemptions under the *Income Tax Act* (Canada). The proposed requirements applicable to infrastructure corporations largely mirror those found in the current exemptions, on the expectation that such requirements would be familiar to plan administrators.

Stakeholders are invited to make submissions by **January 9, 2015**. Submissions should be emailed to pension.feedback@ontario.ca or to the mailing address indicated on the Regulatory Registry.

Stakeholders are invited to comment on all aspects of this proposal. Comments on the following questions in particular are requested.

- Should the list of assets to be filed by the infrastructure corporation (section 3) require the reporting of market value or fair value of each asset?
- Do the limit on activities (section 5) and the proposed definition of public infrastructure (section 12) capture the nature of infrastructure projects in which pension plans may be invested?
- Should the requirement for an independent valuation (section 6) specify acceptable professional designations?
- Should the definition of public infrastructure (section 12) include intellectual property? Why or why not?

B. Proposed Regulation

1. Exemption for an Infrastructure Corporation

The restriction set out in subsection 11 (1) of Schedule III of the federal investment regulations would not apply to an investment in an infrastructure corporation that meets the requirements below.

2. Administrator to File Undertaking by the Infrastructure Corporation

The administrator of a plan would not be permitted to invest, directly or indirectly, the moneys of the plan in the securities of an infrastructure corporation to which are attached more than 30 per cent of the votes that may be cast to elect the directors of the corporation, unless the administrator obtains and deposits with the Superintendent an undertaking by the corporation that, while those securities are held, the corporation will comply with all the requirements described below.

3. Filing by the Corporation

The infrastructure corporation would be required to file with the Superintendent, at such intervals or times as the Superintendent directs:

- copies of its annual financial statements;
- copies of its audited financial statements for each fiscal year;
- a list of its officers, directors and shareholders,
- a certificate stating that the corporation is complying with its undertaking ;and,
- a list clearly identifying the assets of the corporation and fair value of each asset.
 - The list of assets shall not include any asset, other than investments in infrastructure or in the securities of other infrastructure corporations, that is not authorized under the Ontario PBA.
 - The list of assets shall value any securities that are included in the assets of the corporation at a value not exceeding the fair value.

4. Regulator Permitted to Visit and Examine

The infrastructure corporation would be required to permit the Superintendent or an authorized member of the Superintendent's staff to visit its head office and to examine its books and records.

5. Limit on Activities

The infrastructure corporation would be required to limit its activities to acquiring, constructing, holding, developing, maintaining, improving, managing, operating, leasing, or disposing of public infrastructure.

6. Independent Valuation at Request of the Regulator

The infrastructure corporation would be required to procure, at the request of the Superintendent and at its own expense, an independent valuation of any assets owned by it or on its behalf.

7. Related Parties

The infrastructure corporation would not be permitted to lend any of its assets to, or invest any of its moneys in, a related party of the plan.

8. Investment Restriction

The infrastructure corporation would be required to restrict its investments and loans, other than investments in infrastructure or in the securities of other infrastructure corporations, to those authorized under the PBA.

9. Investments in another Infrastructure Corporation

The infrastructure corporation would not be permitted to invest, or hold an investment, in securities of any other infrastructure corporation to which are attached more than 30 per cent of the votes that may be cast to elect the directors of that corporation, unless the corporation first obtains and deposits with the Superintendent an undertaking by the other corporation not to invest, or hold an investment, in the securities of any other infrastructure corporation.

10. Financial statements by the Plan

Any financial statement filed by the plan shall value the common shares of the infrastructure corporation held by, or on behalf of, the plan at a value not greater than the amount obtained by multiplying

- (a) an amount equal to the total assets of the corporation less the sum of its total liabilities and its preferred capital stock, by
- (b) the number of common shares of the corporation held by, or on behalf of, the plan divided by the total number of the issued and outstanding common shares of the corporation.

11. Borrowing by the Infrastructure Corporation

The infrastructure corporation would be permitted to borrow money solely for the purpose of earning current or future income from infrastructure or an interest in infrastructure.

12. Public Infrastructure

Public infrastructure, to which activities of infrastructure corporations would be limited, would be defined as: the physical structures and associated facilities by or through which a public service is provided in Ontario, including (but not limited to) those in the following areas:

- public transit,

- road, highways, and bridges,
- health care facilities and hospitals,
- administration of justice, including courthouses and prisons,
- educational facilities, including primary, secondary and post-secondary institutions,
- power generation, transmission and distribution networks,
- water and waste management systems,
- land registry systems,
- medical or research institutes,
- recreational or cultural facilities,
- housing,
- lottery and gaming facilities, or
- telecommunications.

Public infrastructure must be located exclusively in the Province of Ontario.