**Description of Proposed Regulations to Provide Pension Plan Administrators with a Discharge of Liabilities in Respect of the Purchase of Annuities for Former and Retired Members of a SEPP**

**OVERVIEW**

Currently, if a plan administrator purchases an annuity to provide for a former member or retired member’s pension benefit, the *Pension Benefits Act (PBA)* does not provide the plan administrator with a discharge of liability in respect of the purchase.

The new section 43.1 of the PBA will allow the administrator of a single employer pension plan that provides defined benefits and who has purchased a pension, deferred pension, or ancillary benefit from an insurance company for a former member or retired member to obtain a discharge in certain circumstances. The proposed regulations would set out the additional requirements (in addition to those set out in the Act) that must be met before an administrator is discharged.

***Legislative Amendment***

The new section 43.1 amendment sets out the following requirements:

* An administrator of a single employer pension plan will only be discharged after completing the purchase of an annuity for a former or retired member.
* The annuity must provide the same benefit (to the former member) or provide payments in the same amount and form (to the retired member or spouse of a retired member) as they would have received from the pension plan if the annuity had not been purchased.
* The former member or retired member will retain their entitlement to surplus, in the event there is surplus when the plan is wound up in the future, if they were entitled to surplus under the plan documents at the time of the purchase of the annuity (whether or not there was surplus in the plan at the date of the annuity purchase).
* The insurance company from which the purchase is made must be authorized to sell annuities.
* The annuity contract must meet prescribed requirements.
* The purchase must meet any other requirements, conditions or limitations that may be prescribed including requirements, conditions or limitations relating to funding.
* The administrator must provide notice of the purchase to the former member or retired member, in accordance with prescribed requirements.
* The administrator must file with the regulator a certificate prepared and signed by an actuary certifying that the administrator has complied with the requirements set out in section 43.1 in respect of the purchase, including the prescribed requirements.
* An administrator of a single employer pension plan is discharged in respect of an annuity purchased for a former member or retired member before section 43.1 comes into force, on the filing of a certificate prepared and signed by an actuary certifying that either the original purchase or subsequent adjustments made to the original purchase result in prescribed requirements being satisfied and the administrator has complied with such other requirements as may be prescribed.
* An administrator may only be discharged in respect of an annuity purchased for a former member or retired member before section 43.1 comes into force if the administrator has provided notice to the affected former member or retired member that it intends to file the certificate in order to be discharged.

Note: While section 43.1 does not contemplate that there would be regulations relating to the selection of the annuity provider (insurance company) to which the pension obligations in respect of a former member or retired member would be transferred, the administrator is expected, pursuant to section 22 of the PBA, to act prudently and solely in the interests of pension plan beneficiaries when selecting the insurer.

**PROPOSED REGULATIONS**

The development of proposed regulations will be guided by the following principles:

* The purchase of an annuity should not change the nature of the benefits or payments that former members and retired members are entitled under the pension plan.
* Plan solvency funding levels should be maintained so that remaining plan beneficiaries are not negatively affected.
* There should be adequate notice and disclosure to affected former members and retired members in respect of the purchase and discharge.

It is proposed that the following requirements, along with the requirements set out in section 43.1 of the PBA, would regulate the conditions under which a plan administrator is discharged under section 43.1.

***Funding Requirements for Annuity Purchase***

After an annuity purchase, the solvency funding ratio of the plan must be at least the higher of:

1. The plan’s solvency funding ratio immediately before the annuity purchase; and
2. A solvency funding ratio of 100%. (This ratio is proposed in the Solvency Funding Review to be reduced to 85%)

If the solvency funding ratio of the pension plan is less after the annuity purchase, within 30 days of the date of the purchase of the annuity, the employer must remit to the pension fund of the plan contributions in an amount sufficient to bring the solvency ratio to the higher of the plan’s solvency funding ratio immediately before the annuity purchase and the solvency funding ratio of 100% (or 85% if the new solvency funding rules are enacted).

***Required Content of the Annuity Contract***

An annuity contract under which a deferred pension or pension has been purchased, and if the former member or retired member is entitled to an ancillary benefit, the ancillary benefit has also been purchased, must provide or be adjusted to provide a clear description of the benefit(s) purchased and shall set out that:

* Money payable under the annuity contract is exempt from execution, seizure and attachment. A transaction that contravenes this requirement is void.
* No money transferred, including interest, will be assigned, charged, anticipated or given as security except as permitted by an order under the *Family Law Act*, a family arbitration award or a domestic contract. A transaction that contravenes this requirement is void.
* An order under Part I (Family Property) of the *Family Law Act*, a family arbitration award or a domestic contract is not effective to the extent that it purports to entitle a spouse or former spouse of the annuitant to a share that exceeds 50 per cent of the payments under the life annuity, determined as of the family law valuation date.
* Where the annuitant has a spouse at the time payments commence, the annuity shall be in the form of a joint and survivor annuity as required by section 44 of the *Pension Benefits Act* unless the annuitant and the spouse provide a waiver as set out in section 46 of that Act.
* The amount of the life annuity will be determined on a basis that does not take into account the sex of the annuitant.
* On the death of the annuitant before payment of the annuity, the annuity shall be administered in accordance with section 48 of the *Pension Benefits Act*. (pre-retirement death benefit)
* The annuity contract must permit variation in the terms of payment of a pension or deferred pension in such circumstances of shortened life expectancy as are prescribed under the *Pension Benefits Act,* if the conditions prescribed under that Act are satisfied.

***Requirements for Pre-Existing Annuities***

In order for an administrator to be discharged with respect to an annuity that was purchased before section 43.1 came into force (hereinafter referred to as “pre-existing annuities”), the annuity must meet or be adjusted to meet the requirements of section 43.1(4) and regulations under section 43.1(4).

Adjustments to a pre-existing annuity may be made either by amending the terms of the pre-existing annuity contract, or entering into a new contract with an insurance company that meets the requirements of section 43.1(4) of the PBA.

When a pre-existing annuity is adjusted to meet the requirements of section 43.1(4) and this requires the administrator to make payments from the pension fund for this purpose, the solvency funding ratio of the plan after the adjustments must be at least the higher of:

1. The plan’s solvency funding ratio before the adjustments; and
2. The solvency funding ratio of 100%. (This ratio is proposed in the Solvency Funding Review to be reduced to 85%)

If the solvency funding ratio of the pension plan is less after the adjustments, within 30 days from the date of the adjusted annuity contract, the employer must remit to the pension fund of the pension plan contributions in an amount sufficient to bring the solvency ratio to the higher of the plan’s solvency funding ratio immediately before the annuity purchase and the solvency funding ratio of 100% (or 85% if the new solvency funding rules are enacted)

If no adjustment is required to a pre-existing annuity, the administrator is discharged with respect to the purchase of that annuity if the solvency funding ratio of the plan at the date of discharge is 100% (or 85% if the new solvency funding rules are enacted).

***Notice Requirements***

The notice to the former member or retired member under subsections 43.1(3) and 43.1(7) must be provided to the affected former member or retired member before the administrator is discharged. (Note: Notice requirements are for both pre-existing and future purchases.)

The notice to the affected former member or retired member must include the following information:

* That the administrator has purchased a deferred pension and ancillary benefit (in the case of a former member) or a pension and ancillary benefit (in the case of a retired member) from an insurance company
* In respect of a purchase for a former member, confirmation that the deferred pension or ancillary benefit purchased from the insurance company is the same as the benefit the former member would have received from the pension plan had the purchase not been made.
* In respect of a purchase for a retired member, confirmation that the pension or ancillary benefit purchased from the insurance company will provide the retired member with payments in the same amount and form as the pension or ancillary benefit, as the case may be, that the retired member would have received from the pension plan had the purchase not been made.
* In respect of a purchase where a spouse of a retired member is receiving a specified amount or a proportion of the pension instalment otherwise payable to the retired member in accordance with subsection 67.4(1), confirmation that the retired member and the spouse will be receiving payments in the same amount and form as the payments they would have received from the pension plan had the purchase not been made.
* A summary of the insurance contract under which the deferred or immediate life annuity would be provided.
* The name and contact information of the insurance company from which the annuity has been purchased.
* That the administrator intends to file a certificate prepared and signed by an actuary that it has complied with section 43.1 of the *Pension Benefits Act* and regulations thereunder in order to be discharged.
* That if the administrator is discharged, the former member or retired member will no longer be a former member or retired member of the pension plan.
* If the former member or retired member is entitled to surplus under the plan documents at the time of the purchase of the annuity, the former member or retired member retains his or her entitlement to surplus, in the event there is surplus when the plan is wound up in the future.

***Filing Requirement***

The administrator must file a copy of the annuity contract with the Superintendent.