PR-CONSUL-13/01-0010

FINANCIAL
SERVICES
COMMISSION

DISCUSSION PAPER:

UNLOCKING THE BENEFITS OF APPROVED RETIREMENT SCHEMES

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January 2013

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1.0 BACKGROUND

1.01 Reform of the national systems for the provision of retirement income in several countries during the last two decades has been driven, among other factors, by concerns regarding pension coverage and adequacy of pension benefits. The need for appropriate regulation and supervision is also relevant.

1.02 The White Paper on pension reform issued by the Ministry of Finance and Planning, May 2001 indicates that the foregoing concerns also act as a catalyst propelling pension reform in Jamaica.

1.03 Prior to Jamaica's pension reform initiative, minimal legislative provisions pursuant to the Income Tax Act ("ITA") were put in place for the registration of private pension plans. The ITA also outlines the conditions which must be satisfied by these plans for the granting of tax exempt status.

1.04 In 2005 and 2006 Jamaica's legal framework for monitoring and supervision of private pension plans emerged from the reform measures with the coming into force of the Pensions (Superannuation Funds and Retirement Schemes) Act and associated Regulations ("the Pensions Legislation"). The Pensions Legislation represents, in part, the public policy direction as set out in the White Paper.

1.05 The reform programme is being conducted in two phases:

i. Phase I which is in progress focuses on the registration and licensing of private pension plans falling within the ambit of the Pensions Legislation and their associated trustees and corporate service providers as the case may be. This phase also encompasses the winding-up of pension plans.

ii. Phase II, dubbed as the adequacy phase, which will address matters relating to portability, vesting and preservation of benefits, among other things, has not yet been implemented.

1.06 The private pension plans aforementioned can be placed in two main categories: approved superannuation funds ("ASF")[1] and approved retirement schemes ("ARS")[2]. This taxonomy can be further organized along two dimensions: occupational or personal and voluntary or mandatory in keeping with the nomenclature developed by the OECD[3] Working Party on Private Pensions.

[1] A fund, not being a specified pension fund, whereby contributions towards pensions are made by employers on behalf of employees and which is approved and registered by the FSC

[2] A scheme, not being a specified scheme – (a) to which persons who are self-employed or who are not active members of an approved superannuation fund: make contributions towards a pension or transfer their pension benefits, (b) which is a defined contribution plan or such other plan as may from time to time be prescribed and (c) is open to residents of Jamaica and approved and registered by the FSC

[3] Organization for Economic Co-operation and Development

1.07 Jamaica's private pension system is occupational[4] and personal[5]; as well as voluntary[6] and quasi mandatory[7]. Provisions under the ITA and the Pensions Legislation have created a new paradigm for the provision of retirement income by way of occupational and personal pension plans in the twenty-first century.

1.08 It should however be noted that the current legal framework for participation in ARS is entirely voluntary. In addition, it contains only minimal provisions for the regulation and supervision of ARS in respect of market conduct provisions; those provisions will be incorporated in the adequacy phase of the pension reform.

2.0 The Issue

2.01 While many have lauded the ongoing pension reform programme in Jamaica concerns have begun to surface about the statutory provisions currently in place for approved retirement schemes; a specific type of personal pension plan for self-employed persons and employees in non-pensionable posts.

2.02 The concerns raised relate to the express stipulation under the ITA and the Pensions Legislation that monies contributed to an ARS can only be paid to a member or beneficiary in the event of retirement or death of a member; that is, cash refunds are not permitted in any other event.

2.03 At the same time, there are some stakeholders who have not been reticent about their apprehension in respect of the implications for pension benefit adequacy should cash refunds be allowed prior to retirement or death of a member. Given the taxonomy of pension plans in Jamaica this paper provides a discussion on:

i. the circumstances under which members of occupational and personal pension plans in seven jurisdictions are permitted to take a refund of their contributions prior to retirement; and

ii. strategies for improving pension coverage in relation to approved retirement schemes in Jamaica.

3.0 Jamaica's Statutory Provisions for Payment of Pension Benefits

3.01 This discussion paper provides research conducted with a view to making a determination whether and how the drafting instructions for Phase II of the Pension Reform should be changed for approved retirement schemes; particularly the unlocking of pension benefits.

3.02 **Table 1** provides a summary of the legislative provisions regarding the events under which payment of benefits are permitted from ASF and ARS under the ITA and Pensions Legislation:

Table 1

		ITA		***Pensions Legislation***	
		Provisions	***Reference***	***Provisions***	***Reference***
Termination of membership	ARS	Legislation expressly permits lump sum refunds of contributions from an approved retirement scheme which are	Section 44A of the Income Tax Act, subsection 4, as amended	Legislation permits lump sum payments under certain conditions	Section 14 (1) (b)(viii) & 13(2)(p) of the Pensions

[4] Linked to an employment relationship where the employer is required to make contributions

[5] A pension plan is established and offered by corporate service providers, licensed pursuant to the Pensions Legislation, to individuals who selected the different licensees without the intervention of their employers

[6] Establishment of a pension plan depends on the decisions of employers and licensees

[7] Where an ASF is established the employees are required by law to participate.

		ITA		***Pensions Legislation***	
		Provisions	***Reference***	***Provisions***	***Reference***
		payable on retirement and death	by the Income Tax (Amendment) Act, 2008; The Fourth Schedule to the ITA, Paragraph (1), amendment to the definition of “retiring benefits”, clause (b) Item 11 of the Schedule of Condition to the Income Tax (Approved Retirement Schemes) Rules, 1998		(Superannuation Funds and Retirement Schemes) Act (“the PSFRS”)
	ASF	Upon termination in circumstances where a member is not entitled to a pension or annuity, the contributions paid by him may be refunded to him with or without interest but the contributions of the employer shall not be paid to the employee	Item 11 of the Schedule of Condition to the Income Tax (superannuation Funds) Rule	Refund of members voluntary and compulsory contributions accumulated with interest and/or appreciation in unit values	Section 13 (2)(p)(ii) of the PSFRS
Death	ARS	Amount not exceeding two years remuneration of an employee or chargeable income of self employed contributors or the actuarial value of the member’s interest, whichever is greater	The Fourth Schedule to the ITA	Amount not exceeding two years’ salary or wages or the actuarial value of the member’s interest, whichever is greater	Section 14 (1)(p)(b)(viii)) of the PSFRS
	ASF	Amount not exceeding two years remuneration or the actuarial value of the member’s interest, whichever is greater	Section 44(2)(b)(III)	Amount not exceeding two years’ salary or wages or the actuarial value of the member’s interest, whichever is greater	Section 13 (2)(p)(i) of the PSFRS
Retirement	ARS	Lump sum not exceeding the commuted value of one-quarter off the value of the member’s	The Fourth Schedule to the	Same as under the ITA	Section 14 (1)(p)(b)(viii)) of

		ITA		***Pensions Legislation***	
		Provisions	***Reference***	***Provisions***	***Reference***
		account up to a maximum of 3.125 times the full pension	ITA		the PSFRS
	ASF	Lump sum not exceeding the commuted value of one-quarter off the accrued pension up to a maximum of 3.125 times the full pension	Section 44(2)(b)(i)	Same as under the ITA	Same as under the ITA

4.0 Retirement Provisions in Other Jurisdictions

4.01 Comparative study of information available from various regulatory agencies of private pension plans in a number of countries was undertaken. Pertinent available statutes and regulations were also perused.

4.02 Selecting the countries for primary focus was driven in part by the fact that these jurisdictions have implemented, intend to put in place, or are in the processing of effecting reform of their national systems for the provision of retirement income. Further, three of the countries selected, Canada, the United States of America and the United Kingdom are recognized jurisdictions pursuant to the Pensions Legislation. A summary of pertinent details of the legislative requirements of the selected jurisdictions is provided in **Appendix A.**

4.03 **Table 2** provides a summary of the circumstances under which access to accumulated pension monies in the selected jurisdictions is allowed.

Table 2

	UK	**Ireland**	**USA**	**Australia**	**Bermuda**	**Chile**	**Canada**
Taxonomy	**Voluntary**	**Voluntary**	**Voluntary**	**Mandatory**	**Mandatory**	**Mandatory**	**Voluntary**
Allows refunds (prior to attaining early retirement age)	No	No	Yes	Yes	Yes	Yes	Yes
Refund amount subject to Income Tax			Yes	Yes	Yes	N/A	Yes
Other Special circumstances for pre-retirement refunds							
• Disability and terminal illness	N/A	N/A	Yes	Yes	Yes	N/A	Yes
• Death and funeral expenses	N/A	N/A	Yes	Yes	No	N/A	No
• Medical expenses	N/A	N/A	Yes	Yes	Yes	N/A	Yes
• Assistance with real estate purchases or to prevent foreclosure	N/A	N/A	Yes	Yes	Yes	N/A	Yes
• Account balance is less than a specified, amount	N/A	N/A	No	Yes	Yes	N/A	Yes
• Educational expenses	N/A	N/A	No	No	Yes	N/A	Yes

	UK	Ireland	USA	Australia	Bermuda	Chile	Canada
Taxonomy	Voluntary	Voluntary	Voluntary	Mandatory	Mandatory	Mandatory	Voluntary
• Low Income	N/A	N/A	No	No	No	N/A	Yes
• Personal income tax arrears	N/A	N/A	No	No	No	N/A	Yes
• Maintenance enforcements	N/A	N/A	No	No	No	N/A	Yes
• Loss sustained due to hurricanes	N/A	N/A	Yes	N/A	N/A	N/A	N/A

5.0 Analysis

5.0 Perusal of the wide body of literature regarding the provision of retirement income by way of occupational and personal pension plans indicates that such private arrangements constitute an important supplement to the social security system of many countries including those addressed in this paper. Additionally, in a majority of cases retirement income from private sources is based on a voluntary system in which the plan sponsors and participating members make decisions within regulatory and supervisory frameworks which have developed overtime.

5.01 Typically, the rules applying to occupational and personal pension plans affect when pension monies are paid to the plan members. Distributions are generally made in the event of retirement, disability, death or other severance of employment. It appears too, based on the data, that the extent to which pension plan members have access to pension assets upon a change of job is also an important issue in the design of pension plans.

5.02 Over the last decade or two, the financial risk associated with retirement has been shifted in a number of countries from corporate entities and governments to individuals. Associated with this shift a number of countries have legislated mandatory or quasi-mandatory participation of their labour force. From the study conducted it is noted that three of the seven countries whose pension systems have been evaluated require mandatory participation. It is further noted that five of these countries allow for some amount of pre-retirement distributions. Additionally, it also appears that some countries, may now be more inclined to facilitate early distributions in specific situations; case in point being Bermuda which in 2010 amended its pension ordinance to provide for hardship distributions.

5.03 There is however strong evidence that lump sum distributions prior to retirement, where permitted, have raised concerns about the adequacy of future retirement income. Consequently there are on-going debates in support of a zero tolerance for pre-retirement distributions on the one hand, and for flexibility in plan designs that allows for payment of pension benefits on termination of employment and certain other circumstances on the other hand. The issue of pre-retirement lump sums therefore remains a matter of continuing research in some countries given its relationship to the adequacy of income during retirement.

5.04 Notably, however, while this same concern has been expressed by various stakeholders in the Jamaican context, there is no known national study or research undertaken regarding this issue that would serve to gauge the debate also on-going in Jamaica. Little is therefore known about the extent to which cash distributions on termination of employment for members participating in superannuation funds have eroded retirement wealth. It is therefore difficult to extrapolate on the basis of empirical data the implications for ARS.

5.05 Further, it should be borne in mind that occupational and personal pension plans are not the only means of providing retirement income. It is also noteworthy that there are no national aggregate statistics related to all the private sources of retirement income: ASF, ARS, Specified Pension Funds, Retirement Benefit Schemes, National Insurance Scheme and other types of long term investments. Additionally, retirement wealth may be built up, managed and maintained in different forms that provide a good store of value until retirement; such as land or houses. Therefore to evaluate the potential long term impact of pre-retirement distributions from ARS, a type of personal pension plan, it is important to know the extent to which pre-retirement distributions are put to wealth generating or preservation usages. Unfortunately, that data either does not exist or is not readily available.

5.06 Consequently, it appears that the primary policy concern is that consumption, prior to retirement, of cash distributions may erode the security, in retirement, of members of ARS. While that without a doubt is true, the question must then be raised as to why the counterpart of ARS members who participate in ASF are then able, based on current statutory provisions, to access cash distributions on termination of employment.

5.07 Careful review of the provisions under the ITA and Pensions Legislation shows that ARS are also linked to employment. The difference between ARS and ASF, in this regard, is that whereas the relevant employers of the participating members of ASF are the sponsors of the ASF, in the case of ARS, the sponsors are generally not the employers of the participating members. Certainly it can be argued that the employment of self-employed members or of employees in a non-pensionable post who participate in ARS can be terminated; and if so, on what basis then would it be justified to treat such terminations differently than those in connection with ASF? At the very least, it appears that the current legal framework has failed to take account of the termination of participating employees who are in non-pensionable posts.

5.08 It is also worth noting; three years post implementation of Phase I of the Pension Reform, that in 2009 only approximately 6.2 percent[8] of the employed Jamaican labour force had pension coverage by way of private pension plans and that 0.6 percent of these persons were members of ARS. A significant portion of the employed, in particular self-employed, population in Jamaica, as in the countries examined, has little or no pension coverage.

5.09 It would appear that the anticipation of significant improvement in the participation of individuals in ARS based on recent legislative changes has been predicated on an income tax incentive approach without the corresponding attention to the needs, behaviour and aspirations of the persons targeted by ARS providers.

5.10 Information distilled from the literature perused clearly indicates that such an approach tends to encourage savings least by those who need to save most. Though somewhat speculative there is some evidence that the current legal restrictions on retirement schemes members' ability to receive cash distributions, at least on termination of employment, has made it less likely that significant number of individuals will participate in ARS. Additionally, a review of the data on the winding-up of superannuation funds as at 2012 December 31 shows approximately three (3) percent and eight (8) percent of superannuation funds indicated that the reason for winding-up was due to 'economic hardship' being faced by plan members and the 'global financial crises' respectively.

5.11 Persons without any other sources of funds, from time to time may suffer circumstances that require access to significant amount of funds. Any policy approach adopted should take account of the fact that such individuals are not identical in their needs and strategies for retirement and therefore should not be expected to respond to income tax and other incentives in the same way. In addition, self-employed persons have tenuous financial circumstances where every dollar is needed for day to day personal

[8] STATIN reports the employed labour force as at 2009 October 31 to be 1,113,400.

expenses or for input into their businesses. The propensity to save for retirement is consequently very low and this may of course be compounded by any inability to access accumulated resources prior to retirement; particularly in times of financial distress.

5.12 We posit therefore that the regulatory framework for ARS, should at the least, allow for the design of ARS that takes cognizance of the power of inertia in human behaviour and the uses of other policy tools to buttress success in the way forward.

6.0 Circumstances under which unlocking may be permitted

6.0 It is being proposed that partial cash distributions from ARS should be allowed in the following circumstances, prior to retirement age, provided that no more than 20 percent of the account balance is distributed per occasion and that not more than two distributions are permitted during the accountholder's lifetime:

i. Where the accountholder has a temporary or permanent disability and needs to make modifications to his dwelling to accommodate his disability. It is further recommended that a lower rate of income tax be applied to these withdrawals.

ii. Where the accountholder is experiencing financial hardship: for example, funds are needed to meet medical or funeral expenses of a spouse or dependent. It is recommended that no income tax be assessed on these withdrawals.

iii. Where the accountholder's primary residence is in foreclosure or offered for sale by private treaty. It is recommended that normal income tax rate apply to these withdrawals.

iv. Where the accountholder's primary residence has been destroyed by natural disaster. It is recommended that no income tax be assessed on these withdrawals.

v. Where the accountholder needs funds to pay educational expenses. It is recommended that normal income tax rate apply to these withdrawals.

6.01 Where the accountholder is terminally ill, prior to retirement age, a cash distribution of 100 percent of the account balance may be distributed. It is recommended that no income tax be assessed on this withdrawal.

7.0 Conclusion

7.01 Based on the foregoing analysis and given the proposed amendments under Phase II of the Pension Reform relating to preservation (locking-in) we believe that the dichotomy between ARS and ASF in respect of refunds on termination of employment should be revised. Appropriate regulations connected with the foregoing should therefore be incorporated in the proposed amendments to the Pensions Legislation under Phase II of the Pension Reform.

7.02 Permitting cash distributions prior to retirement in ARS is not a necessary criterion for ensuring adequate pension resources.

7.03 Finally, we posit that there are reasonable policy arguments, as reflected in the forging recommendation, to permit judicious permission of cash distributions to members in ARS. Further that such permission is likely to hold substantial promise for expanding retirement savings, particularly for middle and lower income household and the development of pension products that meets the needs of different prospective and actual participants.

7.04 Looking afield, modernizing Jamaica's voluntary pension landscape in this regard would require only a modest set of policy changes.

The FSC invites comments and suggestions from interested parties regarding the contents of this document. The deadline for submission is **2013 April 19**. Please direct your comments to:

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APPENDIX A

RETIREMENT PROVISIONS IN OTHER JURISDICTIONS

A. *United Kingdom*

i) The Pensions Regulator administers the Pensions Act 2004 and has been charged with the responsibility of working with trustees, employers, pension specialists and business advisers to protect members' benefits and encourage high standards in running pension plans in the UK.

ii) Pursuant to the Pensions Act 2004, most employers are required to offer their employees the opportunity to participate in a pension plan. Where an employer does not provide a company sponsored pension plan, the alternative would take the form of a Personal Pension Plan ("PPP") or a Stakeholder Pension ("SHP"). [9]

iii) A PPP is a UK tax-privileged individual investment vehicle, with the primary purpose of building a capital sum to provide retirement benefits; although it may also be used to provide death benefits. It is noted also that other persons, such as family members or one's partner can pay into a PPP on the member's behalf.

iv) A SHP is a flexible type of personal pension arrangement that by law is required to meet the following minimum standards in order to offer value for money, flexibility and security:

   a) Limit on annual management charges – managers can charge fees up to1.5% annually for the first 10 years; and 1% thereafter.
   b) Flexibility – pension providers can be changed without a penalty being applied; the minimum contribution is £20; and contributions can be stopped, restarted or changed without penalty.
   c) Security – the scheme should be operated by trustees or authorized stakeholder managers.

v) Individuals can save as much as they wish into any number and type of pension vehicles, including SHPs. Tax relief is given on a stipulated annual contribution allowance with amounts contributed over and above the allowance subject to tax.

vi) PPPs and SHPs are defined contribution arrangements and can be purchased from insurance companies, building societies, high street banks, unit trusts and investment organizations. They are available to any UK resident under seventy-five years of age who:

- is self-employed;
- is not working but can afford to pay for a pension;
- does not have access to a company pension plan; or
- wishes to enhance the benefit provided by a company pension plan or chose not to participate in a company sponsored pension plan.

vii) Pension refunds are not allowed from PPPs or SHPs[10]. Members are only allowed to take their pension benefits at retirement (retirement occurs between ages fifty-five and seventy-five) [11] or upon death of the member. An individual however can commence receipt of the pension benefit upon attainment of the specified age without retiring from work. Also, in lieu of a full pension the member or appointed beneficiary may take a maximum of 25% of the total value of the funds as a tax free lump-sum and the remainder can be used to purchase an annuity.

[9] Pensions Regulator

[10] Pension Advisory Service

[11] http://www.hmrc.gov.uk – "Normal minimum pension age to rise to 55 from April 2010".

viii) Instead of purchasing an annuity a member may select the more flexible option of an Income Drawdown. An Income Drawdown is an arrangement where amounts, based on limits calculated by the Government Actuaries Department, are withdrawn periodically and an annuity must be purchased by age seventy-five.

ix) Since, April 2006, persons can choose an Alternatively Secured Pension which is a form of 'income drawdown' that allows individuals to continue investing their pension savings and to draw an income from their fund within specific limits, instead of buying an annuity at age seventy-five.

B. *United States of America ("USA")*

i) An Individual Retirement Account ("IRA") is a retirement arrangement that provides some tax advantages for retirement savings in the United States. IRA's were introduced in 1974 with the enactment of the Employee Retirement Income Security Act ("ERISA") which is a federal law that sets minimum standards for most voluntarily established pension and health plans in the private industry, and provides protection to individuals participating in these plans. The management of ERISA falls under the ambit of the Department of Labour.[12]

ii) There are many variations of IRAs which essentially can be classified as defined benefit and defined contribution plans. Examples of defined contribution plans include 401(k) plans, employee stock ownership plans, and profit-sharing plans.

A 401(k) plan is a defined contribution ("DC") plan that is a cash or deferred arrangement whereby employees can elect to defer receiving a portion of their salary which is contributed on their behalf, before taxes, to the 401(k) plan. An employer may sometimes elect to match these contributions. There are special rules governing the operation of a 401(k) plan. For example, there is a dollar limit on the amount an employee may defer each year. Currently, employees aged 49 and below may defer up to $16,500 per annum, whereas, employees aged fifty and above may defer up to $22,000 per annum. Employees who participate in 401(k) plans in many instances assume responsibility for directing their own investments. Further, because those plans are designed to promote retirement savings the Internal Revenue Service rules prohibit or penalize most withdrawals made before age fifty-nine and a half. They are also the most dominant form of DC retirement savings in the USA.

iii) An Employee Stock Ownership Plan ("ESOP") is a form of defined contribution plan in which the investments are primarily in employer stock.

iv) A Profit Sharing Plan or Stock Bonus Plan is a defined contribution plan under which the plan may provide, or the employer may determine, annually, how much will be contributed to the plan (out of profits or otherwise). The plan contains a formula for allocating to each participant a portion of each annual contribution. A profit sharing plan or stock bonus plan includes a 401(k) plan.

v) A Simplified Employee Pension Plan ("SEP") is a relatively uncomplicated retirement savings vehicle which allows employees to make contributions on a tax-favored basis to IRAs owned by the employees. SEP's are subject to minimal reporting and disclosure requirements.

vi) The Economic Recovery Tax Act ("ERTA") allows for all taxpayers under age seventy and a half to contribute to an IRA regardless of their coverage under a qualified plan[13]. The ERTA also allows an individual to contribute on behalf of a non-working spouse.

[12] Department of Labour

[13] A plan that receives favorable tax treatment based on satisfaction of specific guidelines and is regulated under ERISA.

vii) ERISA allows for a partial withdrawal of retirement savings from an IRA and generally, there are no limitations on when an account holder can take cash distributions. However, the full amount withdrawn is included in the adjusted gross income of the individual in the calendar year the withdrawal was made. Consequently, such IRA withdrawals are subject to ordinary income tax.

viii) Many retirement plans that provide for elective deferrals also provide for distributions due to hardship. If a 401(k) plan provides for such distributions it must specify the criteria used to make the determination of hardship and apply nondiscriminatory and objective standards.

ix) Where a person has not attained at least age fifty-nine and a half years when the aforementioned withdrawal is taken, an additional 10% early distribution penalty tax is levied on that individual. There are exceptions to this penalty however where:

- the account is paid to a beneficiary upon the death of the individual;
- the individual becomes disabled;
- the amount withdrawn is used to fund medical expenses subject to other requirements;
- the individual begins to take substantial equal periodic payments (annuity);
- the withdrawal is related to a qualified domestic relations order ("QDRO"). A QDRO is a legal document that splits an investor's retirement account with a spouse, an ex-spouse or a dependent. A QDRO applies only to assets in retirement plans that are qualified for special tax treatment under the ERISA.
- the withdrawal is used to pay qualified higher education expenses on behalf of an IRA member, his/her spouse, children or grandchildren. Qualified higher education expenses are tuition, fees, books, supplies, and equipment required for the enrolment of a student at an eligible educational institution[14]; and
- the withdrawal is used to buy, build, or rebuild a qualified "first-home"[15] for the IRA member, his / her spouse, children, grandchildren or other ancestor. The maximum permitted per person for these withdrawals is $10,000.

x) The aforementioned tax penalty is however not applicable to all IRAs. For a Roth IRA[16] where contributions are made with after-tax assets withdrawals are usually tax-free.

xi) Additionally, a qualified distribution may also be made from a plan after specified dates to a person whose main home, on specified dates, was located in a hurricane disaster area and who sustained an economic loss by reason of a hurricane. The distribution must also be made before a specified date.

xii) Since 2004 persons aged fifty or older are able to make 'catch-up contributions' each year, up to a dollar limit, to their IRA if certain requirements are satisfied. Generally, catch-up contributions must be made available to all eligible individuals who participate under any pension plan maintained by an employer that provides for elective deferral of income.

C. *Canada (Ontario)*

i) In Canada complementary pensions are regulated by federal and provincial legislation which typically set minimum standards for funding, investment, membership eligibility, vesting, locking-in, portability, death benefits and members' rights to information.

[14] Any college, university, vocational school, or other postsecondary educational institution eligible to participate in the student aid programs administered by the US Department of Education.

[15] First Home – a person has no present interest in a main home during the 2 year period ending on the date of acquisition of the home which the withdrawal is being used for. If a person is married their spouse should also meet the non-ownership requirement.

[16] Roth IRA – Introduced as part of the Taxpayer Relief Act of 1997 and named after Senator William V. Roth Jr.

ii) In order to receive tax benefits pension plans must be registered with the Canada Revenue Agency ("CRA") and the meet the requirements of the Income Tax Act and either the federal Pension Benefits Standard Act or the relevant provincial pension benefits legislation.

iii) The system in Ontario for private pension coverage was selected for review on the basis that the provisions in the different provinces are for the most part similar to those in Ontario.

iv) There are basically three categories of pension plans:

- those that are registered in order to receive tax advantages and are known as Registered Pension Plans ("RPP"). These plans are voluntarily sponsored and member's participation is also voluntary
- unregistered plans which do not receive tax concession
- registered retirement saving plans ("RRSP") and deferred profit sharing plans. While these plans receive tax advantages they are not subject to the various pension standards legislation.

v) Self-employed persons are not covered by RPPs but may contribute to RRSPs.

vi) Contributions made to RRSPs are subject to certain limits while investment returns are tax exempt and retirement benefits taxed.

vii) Generally, in the case of RPPs pension monies may not be paid in cash to members after the vesting period.

viii) However various provinces in Canada allow the "unlocking", under certain circumstances, of all or a portion of pension contributions made. Amounts paid out as cash is subject to tax. The circumstances under which payment can be made before retirement include:

a) commutation of small account balances, under a specified threshold amount[17];
b) where the CRA for tax purposes, determines that an individual is not a resident of Canada;
c) life expectancy has been shortened to two years or less as certified by a doctor;
d) where a member is at least fifty-five years old and the total value of the funds in all locked-in accounts is less than $18,520
e) Some provinces allow unlocking up to 50% of an individual's Locked In Retirement Account ("LIRA") if they are fifty years or older; and
f) financial hardship on the under-listed grounds:

- receipt by a member of written demand for payment of rent owed;
- receipt by a member of written demand from creditors for money owed on a debt secured against a residence;
- money is required to pay the first and last months' rental deposit on a residence;
- total personal income before taxes for the next twelve months is less than a stated amount; the amount changes annually;
- medical treatment required by the member, his or her spouse or the dependent of either of them which is not covered by health insurance;
- residential renovations, alteration or construction to accommodate needs related to a disability or illness; and
- in some provinces, personal income tax arrears and maintenance enforcement[18] arrears.

[17] Threshold – for 2010 if the amount in the account is less than $9,400 for any age and $18,880 for sixty-five years old and older

[18] Legal requirement which ensure that individuals meet their obligations to pay spousal and child support under the terms of their court orders and certain agreements

D. *Australia*

i) The Australian Prudential Regulatory Authority ("APRA") is the prudential regulator of the Australian financial services industry. It oversees banks and credit unions; building societies; general insurance, life insurance and reinsurance companies; friendly societies; regulated superannuation funds[19]; retirement savings account ("RSA")[20]; approved deposit funds and pooled superannuation trusts[21]; all of which are regulated under the Superannuation Industry (Supervision) Act 1993.

ii) By Australian law, all covered persons[22] must become members of a pension plan.

iii) Regulation 6.19A of the Superannuation Industry (Supervision) Regulation 1994 also provides for an application to be made to APRA for the early release of pension monies on the specified compassionate grounds set out below:

a) ***medical treatment*** - Payments for medical or dental expenses or associated transportation costs, for a RSA member or his / her dependent. The medical treatment applicable is limited to: life-threatening illness or injury; alleviation of acute or chronic physical pain or mental condition. Treatment should also not be readily available through the public health system nor covered by private health insurance and/or Workers Compensation;

b) ***mortgage assistance*** – payment is required to prevent a principal place of residence from being sold by the lender. This ground does not include rent or making mortgage payments;

c) ***Modifications to a principal place of residence or motor vehicle –*** this involves expenses required for modifications because a person or his dependent has a severe disability;
Funeral assistance – burial, cremation and other expenses related to the death of a dependent;

d) ***Palliative care –*** expenses relating to a terminal medical condition of a member or his/her dependent; and

e) ***Other expenses*** where the release is consistent with any of the aforementioned grounds as determined by APRA**.**

iv) Although APRA may grant permission for the funds to be accessed under the aforementioned circumstances, the benefits released are at the discretion of the RSA providers.

v) Most early release of benefits attracts income tax which is usually between 20% and 25% of the accumulated assets however in the case of terminal illness all benefits can be accessed tax free; also in some situations the RSA provider may charge an early release fee.

vi) Other grounds, which are not administered by APRA, on which pension monies can be released early by way of direct application to a superannuation fund or RSA institution/provider are:

a) severe financial hardship;
b) terminal illness;
c) permanent incapacity; and
d) where the balance of a preserved benefit is less than $200.

vii) Temporary residents who are permanently leaving Australia can also secure early release of funds through the Australian Taxation Office based on certain conditions.

[19] An indefinitely continuing fund, a provident, benefit, superannuation fund or retirement fund or a public sector superannuation scheme.

[20] An account or policy described as an RSA; and provided by an RSA institution, held by an eligible person, and satisfies specified requirement at the time the account is opened or the policy issued; and that is capital guaranteed (cannot be reduced by negative interest); and opened or issued on or after July 1,1997.

[21] Unit trusts in which superannuation funds rather than individuals invest.

[22] Under the compulsory superannuation guarantee system, contributions must be made in respect of all private and public-sector employees between age 18 -70 and earning AUD$450 or more.

E. *Ireland*

i) The Pensions Board is one of the regulators of occupational pension plans and Personal Retirement Savings Accounts ("PRSA") in Ireland. Its statutory role is to monitor and supervise the operations of the Pensions Act, 1990, as amended. It also advises the Minister of Social and Family Affairs on the development of pensions generally.[23] Pension plans are also regulated by the Revenue Commissioners and Financial Regulators. [24]

ii) A PRSA is a long-term personal defined contribution retirement account first introduced in Ireland through the Pensions (Amendment) Act 2002 ("the Amendment Act"). It is designed to enable persons with no pension provision, to save for retirement in a flexible manner. A PRSA is established via contract between an individual and an authorized PRSA provider and must have a default investment strategy.

iii) There are two types of PRSA:

a) Standard – The maximum charges cannot exceed 5% of contributions paid and 1% per annum of the PRSA assets. In addition, investments are only allowed in pooled funds, except for temporary cash holdings.

b) Non-standard – Charges are not capped and in most cases are higher than Standard PRSA and wider investment choices can be offered.

iv) Any individual under the age of seventy-five may take out a PRSA and charges cannot be applied to transfers to or from PRSAs. Additionally, PRSA providers also cannot impose minimum contributions greater than is stipulated per annum, for electric transaction and other methods of payment.

v) PRSA's can be used to supplement occupational plan benefits and as a substitute for a personal pension scheme (Retirement Annuity Contract)[25].

vi) Employers are obligated to provide access to at least one Standard PRSA arrangement for excluded employees[26]. However, the employers are not obligated to contribute.

vii) There is no requirement to have taxable earnings in order to pay contributions to a PRSA and contributions can be stopped, restarted or changed without penalty.

viii) Where contributions are not paid for two years or more and the value of the PRSA account is less than a stipulated amount the provider can terminate the PRSA after giving three months written notice to the member.

ix) Subject to age and income based limits; tax relief is given for contributions to a PRSA. Further, maximum contributions that are allowed for tax relief purposes increases by 5% per age band[27]. Where an individual's contributions in a given year were more than that on which tax relief is given, the contribution can be carried forward and treated as contribution made in the following tax year.

[23] The Pensions Board: About Us

[24] The Financial Regulator is responsible for the prudential supervision of PRSA providers and sales process of approved PRSA products

[25] Retirement Annuity Contract – an arrangement by self-employed persons or an employee not in a pensionable post to provide retirement income.

[26] The Employer does not offer an occupation plan; the person is included in a plan for death in service benefits only; the employee is not eligible to join or will not become eligible to join within 6 months of employment; the person is included in a plan that does not permit the payment of additional voluntary contributions.

[27] Under 30 Years (15%); 30-39 Years – 20%; 40-49 Years – 25%; 50-54 Years – 30%; 55-59 – 35%; 60 and over – 40%

x) The benefit from a PRSA can be generally accessed only between the age of sixty and seventy-five. Persons can however get their benefits before age sixty where they retire at age fifty or over, or at any time in the event of serious ill-health.

xi) At retirement a member takes up to 25% of the fund as a tax free lump-sum (subject to a maximum) from the PSRA. The balance of the fund may be:

- used to purchase an annuity to provide a pension – this annuity should be payable over a person's lifetime and can include a guarantee for up to ten years, dependents pensions and / or pension increases
- left in the PSRA and withdrawn subject to revenue legislations.
- transferred to an Approved Retirement Fund ("ARF") or an Approved Minimum Retirement Fund ("AMRF")[28].

F. *Bermuda*

i) The pension system in Bermuda is governed by the National Pension Scheme (Occupational Pensions) Act 1998 and its associated Regulations as amended ("the NPSA").

ii) Effective January 1, 2000 mandatory participation based on specified eligibility criteria was established in Bermuda.[29] Persons who do not participate in an employer pension plan (superannuation fund) may join a Financial Institution Pension Plan or a Self-employment Pension Plan.

iii) A Financial Institution Pension Plan is a defined contribution pension plan established by a financial institution and approved by the Pension Commission for employees and self-employed persons.

iv) A Self-employment Pension Plan is a pension plan organized and administered by a financial institution[30] to provide pension benefits in respect of one or more self-employed persons in business together

v) A self-employed person must apply for registration of a Self-employment Pension Plan where they:

- are Bermudian or the husband or wife of a Bermudian;
- are between the age of twenty-three and sixty-five; and
- have pensionable earnings from self-employment exceeding $20,000, in a calendar year.

vi) It is noted that where pensionable earnings from self-employment in a calendar year are less than $20,000 a member is not required to contribute to the pension plan for that year but may choose to do so. Also, no more than $5,000 is required to be contributed in respect of a year, but a member can opt to contribute more.

vii) Under the NPSA the under listed refunds are permitted:

a) Additional voluntary contributions and interest thereon in accordance with the provisions of a pension plan;
b) Contributions made, and interest thereon, prior to the effective date of the National Pension Scheme (Occupational Pensions) Act.;
c) In the case of a defined benefit plan the commuted value, and in respect of a defined contribution plan the account balance, of a member where the commuted value or

[28] Approved Retirement Funds (ARFs) and Approved Minimum Retirement Funds (AMRFs) are not pension schemes even though the investments they represent have come from pension schemes in the first place

[29] The Pension Commission: About Us

[30] Licensed banks and local trust companies; registered insurer and any other company approved by the Pension Commission for purposes of the National Pension Scheme (Occupational Pensions) Act.,

account balance is not more than 5% of the average employment income[31] in the year that the member terminates[32] employment;

d) Where the pension plan permit payment, contributions overpaid by an employer or amounts paid by the employer that should have been paid by the pension plan;
e) Non vested employee contributions with interest; contributions are fully vested after two years of membership;
f) Non vested employer contributions, paid to the employer; and
g) In the case of financial hardship, the vested portion of a member's account balance or the commuted value.

viii) An application must be made to the Pension Commission in the case of items (vii) (d) and (g). Forms and pertinent fees have been prescribed for making an application in relation to financial hardship. Further, the circumstances under which refunds are permitted due to financial hardship are set out in the PRSA.

ix) The regulations provide that an application can only be made where a member or former member of a pension plan has no other reasonable way of raising money to pay for specified expenses and arrears. These expenses and arrears are as follows:

a) ***Eligible medical expenses:*** goods and services, certified pursuant to the regulation as necessary, of a medical or dental nature in respect of an illness or disability, recognized by the Pension Commission, and for which the applicant, or a dependent or parent does not have medical insurance coverage. This includes:

- medical or dental expenses provided by a hospital or a health care provider;
- services by an attendant or nursing home for a person suffering a severe and prolonged disability;
- caregiver and ambulance services;
- medical devices (e.g. wheelchairs, artificial limbs, eyeglasses);
- purchase, training and care for a guide dog;
- dentures;
- rehabilitative therapy;
- prescription drugs; and
- diagnostic testing.

b) ***Imminent loss of principal residence:*** due to arrears of mortgage or other payments relating to a debt secured on the principal residence[33]. The application may not be approved if the names of the mortgagors or debtors do not include the applicant or husband or wife of the applicant. It must also be supported by written notice of imminent foreclosure or sale if payment is not made.

c) ***Eligible educational expenses:*** for the applicant or a dependent, tuition fees, expenses for residence halls and meal plans of a relevant educational establishment[34] and other expenses recognized by the Pension Commission.

x) With regards to medical and educational expense, the application may not be approved where the expenses were already paid or are due to be paid by a third party.

[31] Such income as may, from time to time, be specified as such by the Department of Statistics

[32] Termination includes retirement and death

[33] A housing unit in Bermuda which is owned by the applicant, his or her husband or wife, and is ordinarily inhabited by the applicant on the date of application.

[34] The Bermuda College and any other accredited overseas university, college or tertiary educational institution recognized by the Pension Commission

xi) Other statutory provisions related to financial hardship provides for a minimum payment of $1,000 and a maximum, per application, of 20% of the applicant's commuted value or accounts balances.

xii) A person is only permitted to make two applications within his or her lifetime. Further a period of five years must have elapsed between the dates of approval of a previous application. The Pension Commission is required to notify an applicant of its decision giving reason(s) for any non-approvals.

xiii) An administrator of a pension plan is required to make payments within fifteen days of notification of approval of an application, even if the terms of the relevant pension plan provides to the contrary. The administrator is also not permitted to charge a fee in relation to an application in circumstances of hardship.

G. *Chile*

i) Reform of the pension system commenced in 1981 with the replacement of the then existing system with a private individual capitalization system (concept of defined contribution accounts) and was followed up in 2002 with the introduction of multiple funds in which individuals could participate. Comprehensive reform was also undertaken in 2008.

ii) Under the reform measures introduced private and public sector employees must become members of and contribute to a private defined contribution pension plan. Voluntary contributions may be made to the same pension plan or to another plan voluntarily established with a financial institution authorized to offer such voluntary plans.

iii) Employees may choose a pension fund administrator ("AFP") without the influence of their employers. Also membership is voluntary for individuals who started their first employment before January 1983 and for self-employed persons.

iv) Employers may also conclude an agreement with their employees to make voluntary contributions (known as agreed deposits) to either the mandatory account of the employees or their voluntary savings plans.

v) Additionally, while members may withdraw their own voluntary contributions before retirement, the mandatory contributions, including the agreed deposits, must be used, at retirement, for retirement benefits.

vi) Further, to improve pension coverage the measures implemented in 2008 provide, among other things, for mandatory participation of self-employed workers and improve contribution enforcement by linking contributions with the tax concession offered to the business operated by those persons.