



## GUIDELINE – CONVERSION

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The conversion of a pension plan is not expressly addressed in the Pensions (Superannuation Funds and Retirement Schemes) Act (“the Act”). However the Financial Services Commission (“FSC”) considers the conversion of a pension plan as changing the basic nature or design of the plan. The design of a plan may be altered by changing the plan from a defined benefit plan to a defined contribution or from a defined contribution plan to a defined benefit plan. As such the requirements of the Pensions (Superannuation Funds and Retirement Schemes) (Governance) Regulations 2006 (“the Regulations”) regarding prescribe amendments are applicable.

Under the Regulations a *Material Change* is defined as:

- “(a) *change of status of a fund or scheme including termination or winding up of the fund or scheme, partially or in its entirety;*
- “(b) *bankruptcy of a sponsor;*
- “(c) *liquidation, amalgamation, or reconstruction of a sponsor;*
- “(d) *consolidation, separation or otherwise reconstruction of a fund or scheme;”*

Regulation 18(1)(d) of the Regulations also specifies that:

*“Amendments pursuant to section 35(3)(a) of the Act are amendments which result in a change in the fundamental nature or design of the fund or scheme”*

and section 35(3)(a) of the Act stipulates that:

*“where the trustees intend to amend a Trust Deed and Plan Rules or a Master Trust Deed, the trustees shall not submit the proposed amendments to the Commission for approval unless in the case of prescribed amendments, at least fifty percent of the members of the approved superannuation fund or approved retirement scheme, as the case may be, plus one member signify their approval in the prescribed manner”*

**This bulletin sets out the documents required to be submitted to the FSC where a defined benefit plan is to be converted to a defined contribution plan.** The bulletin also outlines the FSC’s expectations regarding applicable principles.

Where a defined benefit (“DB”) plan is being or is to be converted to a defined contribution (“DC”) plan benefits accrued at the date of conversion are usually preserved using the following approaches:

***Approach 1: New members only***

This approach is based on the accrual of future service benefits on a defined contribution basis for members joining the plan on or after the date of conversion. Persons who are members of the plan prior to the date of conversion continue to accrue benefits on a defined benefit basis.

***Approach 2: Future service only***

Approach 2 is based on the accrual of future service benefits on a defined contribution basis for all members of the plan while maintaining the accrued rights for those who were members at the date of conversion as a DB liability under the plan.

***Approach 3: All service***

This approach is based on the commutation of the defined benefit entitlement of each member of the pension plan and using the value calculated as the member's starting account balance under a new defined contribution provision.

**Documents Required**

Regardless of the approach that will be used in facilitating the conversion the following documents and information are required to be submitted to the FSC:

**Core Documents**

- (i) Resolution by the Board of Trustees or Board of Directors of the sponsor; depending on the provisions stated in the plan's constitutive documents.
- (ii) Documents required for processing the amendment pursuant to regulation 20(1) of the regulations as follows:
  - a. the original and a copy of the proposed amendment;
  - b. a copy of the notice given to members;
  - c. the date on which notices were distributed;
  - d. an extract of the minutes detailing the total membership of the fund or scheme, the number of members present at the participants' meeting, the number of members who voted, and the results of voting, where applicable; and
  - e. a declaration of compliance with the Act

each of which shall be signed by at least a quorum of the trustees;

- (iii) A statement as to whether the trustees and the sponsor have reviewed all relevant documents, inclusive of any collective agreements<sup>1</sup>, and have satisfied themselves that there are no impediments to the conversion; and

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<sup>1</sup> A union negotiated agreement

- (iv) Non-refundable application fee of \$5,000.00.

In addition to the core documents detailed above the underlisted documents are required based on the approach to the conversion as the case may be:

Approach 1: New members only

- A conversion report which includes a brief description of the type of conversion and the persons who are affected by the conversion.

Approach 2: Future service only

- Document listed under Approach 1; and
- Copies of documents pertaining to the conversion, including communication with the members of the pension plan explaining the pros and con of the conversion and how the rights of the participants or beneficiaries will be affected by the proposed change.

While an Actuarial Valuation Report would normally not be required the FSC reserves the right to request submission of this report.

Approach 3: All service

- Documents listed under approach 2;
- Actuarial Valuation report as at the date of conversion;
- Financial statements, audited where applicable, as at the date of conversion;
- Details regarding the treatment of surplus or deficit; and
- Sample of benefit statements proposed to be given to the members.

**Applicable Principles**

In order to achieve transparency and fairness the FSC expects disclosure of:

- (i) The basis used to determine the value of the defined benefits. This basis should not result in the value of a participant's benefit being less than that which was accrued as at the proposed date of the conversion;
- (ii) The value of ancillary benefits. Ancillary benefits<sup>2</sup> must be included in determining the value of an individual's benefits. This includes, for those who do not already satisfy any criteria regarding ancillary benefits, an assumption as to the probability of their ultimately qualifying for the benefit if the plan were to remain unchanged. The valuation

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<sup>2</sup> Ancillary Benefit – A benefit other than a pension or pension benefit that may be provided by an approved superannuation fund or approved retirement scheme, being a disability or death benefit or such other benefit as may be approved by the FSC (The Act – Sec. 2’')

report must list all ancillary benefit and include a statement from the actuary that the appropriate value for these benefits has been included for each member.

- (iii) Details regarding the rate of interest to be applied to the commuted values between the date of conversion and the time they are deposited to the members' accounts;

and that:

- (iv) the members of the plan are informed of the proposed treatment of surplus or deficit; and
- (v) the trustees have sought legal advice regarding the conformity of the proposed amendment with all pertinent documents including any collective agreement.

The circumstances surrounding the conversions of a defined benefit plan to a defined contribution plan may vary considerably. As such the considerations raised in this Guideline may not fully cover all plan conversions and the FSC reserves the right to request additional information. Trustees are therefore asked to contact the FSC for any further clarification or guidance deemed necessary.

Questions regarding this Bulletin may be directed to:

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