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REGULATION 114/96**

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under the
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(O.C. 96-968)

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**NEWFOUNDLAND AND LABRADOR
REGULATION 114/96**

Pension Benefits Act Regulations
under the
Pension Benefits Act, 1997
(O.C. 96-968)

(Filed December 18, 1996)

Under the authority of section 77 of the *Pension Benefits Act, 1997*, the Lieutenant-Governor in Council makes the following regulations.

Dated at St. John's, December 18, 1996.

Wayne Green
for the Clerk of the Executive Council

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**PART I
SHORT TITLE AND INTERPRETATION**

Short title

1. These regulations may be cited as the *Pension Benefits Act Regulations* .

[114/96 s1](#)

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Interpretation

2. (1) In these regulations

(a) "Act" means the *Pension Benefits Act, 1997* ;

- (b) "actuarial gain" means the sum, if positive, as of the review date of a going concern valuation, of the following:
 - (i) the gain to a pension plan during the period since the last review date of the increase or decrease in the value of the assets of a pension plan less the liabilities of the plan, during the period since the last review date determined in a going concern valuation of the plan resulting from the difference between actual experience and the experience expected by the actuarial assumptions on which that valuation was based,
 - (ii) the amount by which the going concern liabilities increase or decrease as a result of an amendment to the plan, and
 - (iii) the amount by which the going concern liabilities increase or decrease or the going concern assets increase or decrease as a result of a change in actuarial methods or assumptions upon which the current going concern valuation is based;
- (c) "actuarial loss" means the sum, if negative, of subparagraphs (b)(i), (ii) and (iii), as of the review date of a going concern actuarial valuation;
- (d) "actuary" means a Fellow of the Canadian Institute of Actuaries;
- (e) "book value", in relation to an asset, means the cost of acquisition to the person acquiring the asset, including all direct costs associated with acquisition;
- (f) [Rep. by 29/13 s1]
- (g) "escalated adjustment" means an adjustment made after the cessation of membership of a member of a pension plan to his or her pension benefit or deferred pension benefit, which adjustment is not capable of being determined with certainty at the time the plan, or an amendment to that plan, is submitted for registration because the adjustment is related to the investment earnings of the pension fund or to future changes in a general wage or price index;
- (h) "financial institution" means
 - (i) a bank,
 - (ii) a body corporate to which the *Trust and Loan Companies Act* (Canada) applies,
 - (iii) a cooperative credit society to which the *Cooperative Credit Associations Act* (Canada) applies,
 - (iv) an insurance company to which the *Insurance Companies Act* (Canada) applies,
 - (v) a trust, loan or insurance corporation incorporated by or under an Act of the legislature of a province,
 - (vi) a cooperative credit society incorporated and regulated by or under an Act of the legislature of a province,
 - (vii) an entity that is incorporated or formed by or under an Act of Parliament or of the legislature of a province that is primarily engaged in dealing in securities, including portfolio management and investment counselling, or
 - (viii) a foreign institution;
- (i) "foreign institution" means an entity that is

- (i) engaged in the business of banking, the trust, loan or insurance business, the business of a cooperative credit society or the business of dealing in securities or is otherwise engaged primarily in the business of providing financial services, and
 - (ii) incorporated or formed otherwise than by or under an Act of Parliament or of the legislature of a province;
- (j) "going concern assets" means the value of the assets of a pension plan including income due and accrued, determined on the basis of a going concern valuation;
- (k) "going concern liabilities" means the present value of the accrued benefits of a pension plan including amounts due and unpaid, determined on the basis of a going concern valuation;
- (l) "going concern unfunded liability" means the excess of going concern liabilities over going concern assets;
- (m) "going concern valuation" means a valuation of going concern assets and going concern liabilities of a pension plan prepared on the basis of a continuing pension plan as required by the superintendent;
- (n) "insured plan" means a pension plan funded through a contract with a life insurance company where all the benefits under the plan are guaranteed by the life insurance company;
- (o) "life income fund" means a registered retirement income fund established in accordance with the *Income Tax Act* (Canada) that is locked in in accordance with these regulations and meets the requirements of the superintendent;
- (p) "locked in retirement account" means a registered retirement savings plan established in accordance with the *Income Tax Act* (Canada) that is locked in in accordance with these regulations and meets the requirements of the superintendent;
- (q) "market value" in respect of an asset, means the price that would be obtained in the purchase or sale of the asset in an open market under conditions requisite to a fair transaction between parties;
- (r) [Rep. by 29/13 s1]
- (s) "public sector pension plan" means, for the purpose of the Act and these regulations, the
 - (i) Public Service Pension Plan,
 - (ii) Uniformed Services Pension Plan,
 - (iii) Teachers' Pension Plan,
 - (iv) Members of the House of Assembly Pension Plan,
 - (v) Government Money Purchase Pension Plan, and
 - (vi) Memorial University Pension Plan;
- (t) "review date" means the date as of which a report is or was required to be made under section 5;
- (u) [Rep. by 29/13 s1]

- (v) "solvency assets" means the market value of investments held by a pension plan plus any cash balances of the plan and accrued or receivable income items of the plan, less any amounts payable by the plan;
- (w) "solvency deficiency" means the deficiency determined by a solvency valuation performed in accordance with section 11;
- (x) "solvency gain" means the sum, if positive, as of a review date of a solvency valuation performed in accordance with section 11, of the following:
 - (i) the gain to a pension plan during the period since the last review date of the solvency valuation resulting from the difference between actual experience and the experience expected by the actuarial assumptions on which that valuation was based, and
 - (ii) the amount by which the solvency liabilities increase or decrease or the solvency assets increase or decrease as a result of a change in the actuarial methods or assumptions upon which the current solvency valuation is based;
- (y) "solvency ratio" means the lesser of one and the fraction obtained by dividing the solvency assets of a pension plan by the liabilities of the plan calculated on a plan termination basis as of the latest review date and as required by the superintendent; and
- (z) "special payment" means a payment or one of a series of payments determined for the purpose of liquidating a going concern unfunded liability or solvency deficiency in accordance with section 12.

(2) For the purpose of these regulations, money in a pension plan, an RRSP, a life annuity contract or a retirement income fund as defined in the *Income Tax Act* (Canada) that meets the requirements of these regulations is locked in if its withdrawal, surrender or commutation is prohibited by any of the following:

- (a) subsection 43(2) of the Act;
- (b) a contract as set out in a directive of the superintendent; and
- (c) any legislation of a designated province that is similar to paragraph (a) or (b) of these regulations.

(3) The definitions in paragraphs (1)(e) and (w) shall apply wherever those terms are used in the Act.

[114/96 s2; 29/13 s1](#)

PART II ADMINISTRATION OF PENSION PLANS

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Annual information return

3. The annual information return required under section 16 of the Act shall be delivered to the superintendent within 6 months following the end of the fiscal year of the pension plan with any required fees.

[114/96 s3](#)

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Filing of reciprocal transfer agreements

4. (1) An administrator of a pension plan shall, file with the superintendent within 6 months of the commencement of these regulations, a certified copy of any reciprocal transfer agreement entered into before commencement of these regulations.

(2) An administrator of a pension plan shall, within 60 days following execution of the reciprocal transfer agreement, file with the superintendent a certified copy of any agreement entered into on or after the commencement of these regulations.

[114/96 s4](#)

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Reporting

5. (1) This section applies only to a pension plan that contain one or more defined benefit provisions.

(2) An administrator of a pension plan shall have the plan reviewed as follows:

(a) in the case of a new pension plan, as of the effective date of the plan;

(b) where the superintendent sends a notice to the administrator requesting that a review be made of the plan, as of the date specified in the notice; and

(c) subject to paragraphs (a) and (b) and subsection (3), as of the end of a fiscal year of the plan and at intervals not exceeding 3 fiscal years after the preceding review date.

(3) Actuarial valuation reports and cost certificates resulting from reviews required by subsection (1) shall be filed with the superintendent, by the administrator

(a) in the case of a new pension plan, within 60 days after the date of establishment of the plan; and

(b) in the case of a review date occurring after the effective date of the plan, not later than 9 months after the review date.

(4) In the case of a defined benefit plan, where an amendment to the plan affects the cost of benefits provided by the plan, creates an unfunded liability or otherwise affects the solvency or funding of the plan, the administrator of the plan shall have the plan reviewed or the latest review revised as of the date of the amendment.

(5) Where the plan is reviewed under subsection (4), the review date shall be considered to be the last day of the fiscal year preceding that in which the amendment was made.

(6) Subsection (4) does not apply if an actuary certifies that no change in contributions to the plan is required before the next review date.

[114/96 s5](#)

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Review of defined benefit pension plans

6. (1) In the case of a defined benefit plan, other than a defined benefit plan that is a fully insured plan, a review of the plan required by section 5 shall be in the form of an actuarial valuation

report prepared by an actuary in a manner consistent with the accepted standards of practice for the preparation of actuarial valuation reports for pension plans issued by the Canadian Institute of Actuaries.

(2) In the case of a defined benefit plan that is a fully insured plan, an actuarial valuation report or a cost certificate required under section 5, may be prepared and signed by any person so authorized by the insurance company.

(3) An actuarial valuation report required under subsection (1) shall be prepared on the basis of a going concern valuation containing information required by the superintendent and a solvency valuation under section 11.

(4) Where a going concern valuation is made in respect of a pension plan that provides a pension benefit based on a rate of salary at retirement date or on average rates of salary over a specified and limited period, a projection of the current salary of each member shall be used to estimate the salary on which the pension benefit payable at retirement date shall be based.

(5) Where an escalated adjustment has been made from the pension fund, the amounts, to the extent that they have not been prefunded, are considered to be part of the normal actuarial cost.

(6) Where a person authorized to prepare and sign an actuarial valuation report or cost certificate respecting an insured plan under subsection (2) certifies that

(a) all pension benefits relating to a defined benefit provision of the plan, are insured by a contract with an insurance company under which that company is obligated to pay those benefits; and

(b) all future benefits shall accrue under a defined contribution provision of the plan,

the administrator is not required to file any further actuarial valuation reports or cost certificates until the plan again provides for benefits to accrue under a defined benefit provision.

[114/96 s6](#)

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Review of multi-employer defined benefit pension plans

7. (1) In the case of a multi-employer pension plan containing a defined benefit provision, the actuary shall, as part of the actuarial report required under section 5 and in addition to the requirements of section 6 and any directives of the superintendent,

(a) perform those tests that shall demonstrate the sufficiency of the contributions required by the collective agreement or agreements to provide for the pension benefits set out in the plan, without consideration of any provision for reduction of benefits set out in the plan; and

(b) where the contributions are not sufficient to provide the pension benefits under the plan, propose options available to the administrator of the plan for required contributions to meet funding requirements.

(2) Where an actuary proposes options in accordance with paragraph (1)(b), he or she shall file a copy of the report with the superintendent within 30 days of submitting the report to the administrator and the time period referred to in subsection 5(3).

(3) Where an actuary has proposed options in accordance with paragraph (1)(b), an administrator of a pension plan shall take action to have in the plan meet the funding requirements of

this section within 180 days following the date on which the actuary submitted the report to the administrator.

(4) Where options have been proposed under paragraph (1)(b), an administrator of a pension plan shall advise the superintendent of the action taken for the plan to meet the funding requirements of this section within 180 days following the date the actuary submitted the report to the administrator and the administrator shall file all documents relevant to the action taken.

[114/96 s7](#)

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Solvency funding exemption for multi-employer plans

7.1 (1) An administrator of a multi-employer pension plan may elect that subsections (3) to (7), instead of subsections 7(1) to (4), apply to a report filed under sections 5, 6, 11 and 12 where the period covered by the report is between January 1, 2016 and December 31, 2020 inclusive.

(2) [Rep. by 125/13 s1]

(3) The required contributions to a multi-employer pension plan are sufficient if, for each year of the period covered by the report, they are not less than the sum of the following amounts determined under a going concern valuation:

- (a) the normal cost of the plan;
- (b) the special payments set out in a previous report that remain to be paid with respect to any going concern unfunded liability; and
- (c) the special payments to be paid with respect to a going concern unfunded liability that is determined in the report.

(3.1) Notwithstanding paragraph 12(3)(c), the maximum period for liquidating a going concern unfunded liability for a multi-employer pension plan is within 12 years of the review date for actuarial reports prepared with review dates between December 31, 2015 and December 31, 2020 inclusive.

(4) Within 60 days after electing to have this section apply to a report filed under sections 5, 6, 11 and 12, the administrator of a multi-employer pension plan shall give written notice of the election to each member and former member of the plan.

(5) The written notice required by subsection (4) shall contain all the following information:

- (a) the name and provincial registration number of the multi-employer pension plan;
- (b) the name and contact of the administrator;
- (c) the solvency ratio of the plan and, where the plan is amended to increase benefits, the solvency ratio before and after the amendment, effective on the valuation date of the report; and
- (d) an explanation of how the security of pension benefits for members and former members might be affected as a result of the election made under this section.

(6) Within 60 days after filing a report to which this section applies, an administrator shall

- (a) file a copy of the notice required by subsection (4) with the superintendent; and

- (b) give a copy of the notice required by subsection (4) to every employer who makes contributions to a multi-employer pension plan and to every bargaining agent who represents members of the plan.

(7) In addition to the requirements of subsection (6), an administrator who files a report to which this section applies shall give a copy of the notice required by subsection (4) to each person who, after the report is filed and before the next report is filed, will be eligible or is required to become a member of the multi-employer pension plan, and the notice shall accompany the information required to be given to the person under subsection 25(1) of the Act.

[29/08 s1](#); [125/13 s1](#); [23/17 s1](#)

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Remittance of contributions

8. (1) For the purpose of section 30 of the Act, all contributions shall be remitted to the pension fund within the following time periods:

- (a) in the case of member contributions, all sums received by the employer from an employee or deducted from an employee's pay as the employee's contribution to the plan, within 30 days following the month in which the sum was received or deducted;
- (b) in the case of employer contributions determined in accordance with a formula respecting
 - (i) a defined contribution provision that relates to profits of the employer, other than minimum required contributions, 90 days after the end of the fiscal year, or
 - (ii) a defined contribution provision that does not relate to profits of the employer or that are minimum required contributions, 30 days after the end of the month for which those contributions are payable;
- (c) in the case of employer contributions to a defined benefit multi-employer pension plan or a pension plan where employer contributions are based on a fixed rate of dollars and portion of dollars per hour of employment, 30 days after the end of the month for which those contributions are payable; and
- (d) subject to paragraph (c), in the case of employer contributions relating to normal actuarial costs and special payments in respect of a defined benefit provision that are payable on at least a quarterly basis, 30 days after the end of each period in respect of which they are payable.

(2) In the case of a multi-employer pension plan established under a collective agreement or a pension plan that contains one or more defined benefit provisions where the obligation of an employer to contribute to the plan is limited to a fixed amount set out in a collective agreement, an employer, or any person required to make contributions on behalf of an employer, shall pay to the fundholder amounts which are not less than the sum of

- (a) any contributions received from employees, including money withheld from an employee, whether by payroll deduction or otherwise as the employee's contribution to the plan within 30 days following the month in which the sum was received or deducted; and
- (b) the amounts set out in the applicable collective agreement required to be paid by the employer or the person required to make contributions on behalf of the employer within the time limit specified by the applicable collective agreement but in any event, within 30

days following the month in which the period of employment giving rise to those payments occurred.

[114/96 s8](#)

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Interest on contributions

9. (1) For the purpose of subsection 36(2) of the Act, the method first selected under that subsection to calculate the rate of interest may not be changed without the prior written consent of the superintendent.

(2) Subject to this section, the rate of interest to be applied to contributions for the purpose of subsection 36(1) and (2)(b) of the Act is the amount determined under a pension plan as the gross rate of interest earned by the pension fund that holds those contributions, for the most recently completed period for which interest is to be applied, less the rate attributable to any expenses of administering the plan fund that holds those contributions relating to that period that are not required to be paid by the employer.

(3) Interest shall be calculated at least annually, promptly after the end of each fiscal year.

(4) Interest shall be applied at least annually as follows:

(a) to member contributions, additional voluntary contributions, and if applicable, employer contributions made to the end of the fiscal year immediately preceding the most recently completed fiscal year, together with prior interest credited on those contributions, at the applicable interest rate described in subsection 36(1) and (2) of the Act; and

(b) to member contributions, additional voluntary contributions and if applicable, the employer contributions made during the most recently completed fiscal year at one half of the applicable interest rate prescribed by subsections 36(1) and (2) of the Act.

(5) If a person becomes entitled to have a refund of contributions, interest shall be applied, with respect to all member contributions, additional voluntary contributions and if applicable, employer contributions, to the end of the month immediately preceding the date of payment or return of contributions or the first payment in a series of payments, at whichever of the following rates is provided for in the plan:

(a) the rate calculated by dividing 365 into the product of the number of days in the uncompleted fiscal year with respect to which interest is to be paid and the applicable rate provided for by section 36 of the Act at the end of the immediately preceding fiscal year;

(b) the actual net rate of interest earned by the plan during that portion of the uncompleted fiscal year as determined under subsection (2); and

(c) an estimate of the actual net rate of interest determined solely on the basis of information regarding the performance of the investments of the assets of the plan during that portion of the uncompleted fiscal year, as reported to the administrator by the fund holder or the person making the plan investments.

(6) Where in a defined benefit provision the rate determined under subsection (5) would result in a negative interest rate, the interest rate to be applied under that subsection is zero.

(7) Once the method of calculating the rate under subsection (5) has been chosen in respect of a fiscal year, that method shall be used for all pension benefit payments from the plan during that fiscal year.

(8) Notwithstanding subsections (4) and (5), a pension plan may provide for interest on contributions referred to in those subsections to be calculated in another manner and at other rates as the superintendent considers reasonable.

(9) For the purpose of subsection 36(1) and (2) of the Act, "contributions" does not include contributions returned to a member of a pension plan or to an employer who participated in a pension plan if the contributions are returned to avoid revocation of the plan's registration under the *Income Tax Act* (Canada).

[114/96 s9](#)

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Interest on late payments

10. Where an employer has failed to remit contributions within the required period under sections 8 and 12, subsequent payment of contributions shall include contributions plus interest at the rate specified in subsections 36(1) and (2) of the Act as applicable.

[114/96 s10](#)

PART III FUNDING AND SOLVENCY

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Tests for solvency

11. In the preparation of an actuarial valuation report to determine the existence of a solvency deficiency, a solvency valuation shall be performed in the following manner:

- (a) the solvency liabilities of a pension plan shall be determined on the basis that the plan is terminated or on a basis that is certified by an actuary to be reasonably approximate to that, taking into account any significant increases or decreases in pension benefits to the plan members as a result of the termination;
- (b) notwithstanding paragraph (a), solvency liabilities of a multi-employer pension plan established under one or more collective agreements or a trust agreement or a pension plan that contains one or more defined benefit provisions where the obligation of an employer to contribute to the pension fund is limited to a fixed amount set out in a collective agreement shall be determined on the basis of the pension benefit structure set out in the plan at the date of the solvency valuation, without consideration of the possible reduction of those pension benefits;
- (c) the solvency assets shall be the sum of
 - (i) the market value of investments of the pension fund or a value related to the market value by means of an averaging method which stabilizes short-term fluctuations over a period of not more than 5 years, plus any cash balances and accrued or receivable income,
 - (ii) the present value of any remaining special payments established before January 1, 1997 ,
 - (iii) the present value of any special payments required to liquidate any solvency deficiencies that emerged after December 31, 1996 as a result of pension benefits granted for a period of employment before the effective date of the plan, where the

employment had not previously been recognized by the plan, created under the Act and established on or after January 1, 1997, and

- (iv) the present value of any other special payments established on or after January 1, 1997 which are scheduled for payment within 5 years of the review date;
- (d) the present values referred to in subparagraphs (c)(ii), (iii) and (iv) shall be determined on the basis of the assumed interest rate used in the solvency valuation; and
- (e) where there is not a market value for an investment of a pension plan and the investment is issued or guaranteed by a government, the book value of the investment may be used instead of market value in paragraph (c)(i).

[114/96 s11](#)

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Funding

12. (1) This section applies only to a pension plan that contains one or more defined benefit provisions.

(2) For the purpose of section 30 and 35 of the Act, every pension plan to which this section applies shall be funded in accordance with the funding requirements of this section.

(3) Subject to subsections (5) and (6) and section 13, every employer shall pay to a pension fund

- (a) employer contributions, within 30 days following the end of each period in respect of which contributions are payable, equal to the normal actuarial cost allocated to the employer as stated in the most recent actuarial valuation report or cost certificate filed;
- (b) special payments determined in accordance with subsection (7) with respect to an "initial unfunded liability" or "experience deficiency" as defined under the former Act;
- (c) special payments required to liquidate by equal payments made at least quarterly, with interest at the going concern valuation rate, any other going concern unfunded liability within 15 years of the review date of the actuarial valuation in which the liability is identified; and
- (d) the amount required to liquidate any solvency deficiency by equal payments made at least quarterly, with interest at the solvency valuation interest rate, within 5 years of the review date of the solvency valuation in which solvency deficiency is identified.

(4) Each going concern unfunded liability or solvency deficiency shall be funded separately and not combined with any other going concern unfunded liability or solvency deficiency.

(5) Where a solvency deficiency has been amortized, the reviewer may recalculate any special payments for any going concern unfunded liability that has not been amortized and the employer may make the special payments as recalculated instead of the special payments calculated at the review date relating to the establishment of the going concern unfunded liability.

(6) As an alternative to the calculation of minimum special payments under paragraphs (3) (c) and (d), the payments may be determined by reference to a schedule of payments determined as follows:

- (a) each scheduled payment shall be a constant percentage of the projected future payroll of members determined using the same actuarial assumptions as used in the going concern

valuation, on the date of original establishment of the going concern unfunded liability or the solvency deficiency;

(b) the present value of the scheduled payments over time at the date of establishment of the unfunded liability or the solvency deficiency using the interest rate assumed in the going concern valuation or solvency valuation, as applicable, shall be equal to the amount of the liability being liquidated; and

(c) the amortization periods for each series of scheduled payments shall be the same as the respective periods under paragraphs (3)(c) and (d).

(7) The minimum remaining special payments referred to in paragraph (3)(a) shall be determined after utilizing any unused actuarial gains existing on January 1, 1997 .

(8) Where the rate of special payments has been greater than the minimum rate required under subsection (3) by the making of special payments in advance or any additional payments, the amount of special payments for subsequent periods may be reduced provided that the outstanding balance of any going concern unfunded liability or solvency deficiency shall at no time be greater than it would have been had the special payments required under subsection 12(3) been made, taking into account the effect of any application of an actuarial gain or a solvency gain in accordance with section 13.

(9) Where the period covered by a report filed under section 5 has passed and no new report has been filed with the superintendent, an employer shall continue to make payments in accordance with the requirements of the most recent report filed until a new report is filed.

(10) In the event of over contribution by the employer, an employer shall receive a refund of the over contribution.

(11) In the event of under contribution by the employer, an employer is required to, within 60 days of the filing of the report, remit all monthly amounts that have not yet been paid into the pension fund, calculated from the date on which they are required to be made to the date of filing the report with the superintendent, plus interest at the going concern valuation rate or the solvency valuation rate, as applicable.

[114/96 s12](#)

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Corner Brook Pulp and Paper Limited pensions

12.1 (1) In this section

(a) "acceptable rating" means the rating given by a credit rating agency to an issuer at the time of the issuance or renewal of a letter of credit that is at least equal to one of the following ratings:

(i) A, from Dominion Bond Rating Service Limited,

(ii) A, from Fitch Ratings,

(iii) A2, from Moody's Investors Service, or

(iv) A, from Standard & Poor's Ratings Services;

(b) "credit union" means

(i) a credit union to which the *Credit Union Act, 2009* applies,

- (ii) a cooperative credit society, or
- (iii) a credit union incorporated and regulated by or under an Act of Canada or another province;
- (c) "issuer" means a bank or credit union that has an acceptable rating by 2 credit rating agencies;
- (d) "pension plans" means
 - (i) the Pension Plan for Unionized Employees of Corner Brook Pulp and Paper Limited, and
 - (ii) the Pension Plan for Non-Union Salaried Employees of Corner Brook Pulp and Paper Limited;
- (e) "trust fund" means the settled property, letters of credit, cash, securities or other property and all proceeds thereof, held by the Corner Brook Pulp and Paper Limited Pension Trust, the beneficiaries of which are the pension plans;
- (f) "trustees" means the trustees of the trust fund; and
- (g) "value of letter of credit" means the lesser of
 - (i) the combined solvency deficiency where there is a solvency deficiency in both pension plans and where there is a solvency deficiency in only one pension plan, the solvency deficiency in that pension plan, and
 - (ii) the face amount of the letter of credit as approved by the superintendent;
- (2) Corner Brook Pulp and Paper Limited shall obtain a letter of credit for the pension plans.
- (3) The letter of credit shall be an irrevocable, unconditional standby letter of credit that
 - (a) is in accordance with the rules of International Standby Practices 1998 (publication No. 590 of the International Chamber of Commerce);
 - (b) is payable only in Canadian currency;
 - (c) is issued or confirmed by an issuer who is a member of the Canadian Payments Association ;
 - (d) has a face amount that shall not exceed \$88,000,000.00; and
 - (e) provides that
 - (i) the letter of credit is issued to the trust for the benefit of the pension plans,
 - (ii) the issuer will pay the face amount of the letter of credit on demand from the trustees without inquiring whether the trustees have a right to make the demand,
 - (iii) the insolvency, liquidation or bankruptcy of Corner Brook Pulp and Paper Limited shall have no effect on the rights and obligations of the issuer and the trustees, and
 - (iv) the letter of credit may not be amended during the term of the letter of credit.

(4) Notwithstanding subparagraph (3)(e)(iv), during the term of the letter of credit the face amount may be increased or decreased in accordance with the trust and the approval of the superintendent.

(5) The letter of credit shall stay in force until a deficit no longer exists in the pension plans.

(6) At least 30 days before the expiry date of the term or any renewal term of the letter of credit, Corner Brook Pulp and Paper Limited shall provide written confirmation to the superintendent stating

(a) that the letter of credit has been renewed or replaced;

(b) the name of the issuer;

(c) the face amount; and

(d) the term of the letter of credit.

(7) The solvency assets of the pension plans shall, in addition to the assets referred to in subparagraphs 11(c)(i) to (iv), include the value of the letter of credit which shall be allocated between the pension plans in the manner required by the superintendent.

(8) For the purposes of an actuarial review required under section 5, the value of the letter of credit may be applied to reduce the special payments required under subparagraph 12(3)(d) that have accrued before the review date of the actuarial valuation but have not been remitted to the pension funds of the pension plans.

(9) Where the pension plans are terminated by the superintendent or otherwise, the proceeds of the trust fund shall be allocated between the pension plans in the manner required by the superintendent.

(10) Notwithstanding subsection (9), the proceeds of the trust fund shall only be allocated to one or both of the pension plans if the assets in the pension fund for that plan are less than the value of benefits provided under that pension plan.

(11) Where the proceeds of the trust fund are allocated to one or both of the pensions plans under subsection (9) and surplus assets remain in that plan after the payment of all benefits provided under the pensions plan, the surplus assets shall be paid to Corner Brook Pulp and Paper Limited.

(12) Notwithstanding this section, for the purposes of subparagraph 32(1)(b)(ii) of the Act, the amount of special payments accrued is considered to be the amount by which

(a) the aggregate amount of special payments that would have been remitted to the pension fund

exceeds

(b) the aggregate amount of special payments made to the pension funds.

[51/17 s1](#)

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Utilization of actuarial gain and solvency gain

13. (1) Where an actuarial report with a review dated on or after January 1, 1997 reveals

- (a) an actuarial gain under a pension plan with respect to a period which begins on or after January 1, 1997 ; and
- (b) there is no new solvency deficiency nor any unamortized balance of any previous solvency deficiency first established on or after the January 1, 1997

the actuarial gain shall first be applied to reduce the outstanding balance of any going concern unfunded liability with the oldest established going concern unfunded liabilities being amortized or reduced before the later ones.

(2) Where the outstanding balance of a going concern unfunded liability is reduced under subsection (1), the balance remaining may be reamortized over the same or a shorter period.

(3) Where there is no going concern unfunded liability or solvency deficiency, the actuarial gain referred to in subsection (1) may, subject to sections 21 and 22, be applied to reduce the contribution of the employer to the normal actuarial cost of the plan, be applied to increase benefits under the plan, be left in the fund, or paid or transferred to the employer.

(4) Where an actuarial gain is not utilized as of the review date on which the actuarial gain is reported, any subsequent utilization of the actuarial gain is subject to the requirements of subsections (1), (2) and (3).

(5) Where a report with a review date on or after January 1, 1997 discloses a solvency gain, the special payments referred to in paragraph 12(3)(d) shall be adjusted as follows:

- (a) if the solvency gain is greater than or equal to the present value of the special payments under paragraph 12(3)(d), the special payments may be reduced to zero; and
- (b) if the solvency gain is less than the present value of the special payments under paragraph 12(3)(d), the monthly rate of the special payments shall not be changed but the amortization period or periods for the special payments may be reduced so as to reduce the excess to zero.

[114/96 s13](#)

PART IV COMMUTED VALUE AND TRANSFER

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Commuted value

14. (1) The commuted value of a pension benefit determined under a defined benefit provision shall, at a minimum,

- (a) be determined in a manner that complies with the Canadian Institute of Actuaries Recommendations for the Computation of Transfer Values from Registered Pension Plans, as amended, or another method as determined or approved by the superintendent;
- (b) be determined as of the date of cessation of membership, death, retirement, or termination of a pension plan; and
- (c) be adjusted, in respect of the period between the date determined under paragraph (a), at a date not earlier than the end of the month immediately preceding the payment or transfer of the commuted value out of the plan, with interest at a rate not less than the rate of interest that was assumed in determining the commuted value over the same period of time.

(2) The commuted value of a pension benefit determined under a defined contribution provision, shall be the value of the accumulated contributions with interest made to the pension fund by or in respect of a member of former member.

(3) If at the date of determination of the commuted value the former member has an unconditional entitlement to optional forms of a pension benefit or to optional commencement dates, the option that has the greatest value shall be used to determine the commuted value.

[114/96 s14](#)

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Transfer

15. (1) For the purpose of this section, any transfer considered to impair the solvency of a pension plan is not permitted under the Act.

(2) The transfer value of a pension benefit as of a given date shall be determined by multiplying the commuted value, as determined in accordance with section 14 by the most recently determined solvency ratio.

(3) Payment out of the fund of the transfer value calculated in subsection (2) shall not be considered to impair the solvency of the plan and is permitted under this Act.

(4) Subject to subsection (5), where a pension plan has a solvency ratio that is equal to 1.00, a transfer shall not be considered to impair the solvency of the plan for the purpose of section 40(4) of the Act but the superintendent may, on the written request of an administrator, permit an administrator to refuse the transfer if the superintendent agrees with the administrators assessment that the transfer would materially impair the solvency of the plan.

(5) Where an administrator of a pension plan has reason to believe that the solvency ratio of the plan may have been reduced to a value less than 0.9 since the last valuation, the administrator shall not permit any transfers without the prior approval of the superintendent and have a new solvency ratio determined by an actuary.

(6) Where the commuted value is calculated on a basis more generous than the minimum basis prescribed by section 14, the actuary shall confirm that the transfer will not impair the solvency ratio of the plan.

(7) Notwithstanding subsection (1), where a pension plan has a solvency ratio that is less than 1.00, the administrator of the plan may transfer the whole of the commuted value of a pension benefit if

- (a) the administrator is satisfied that an amount equal to the solvency deficiency for the individual transfer has been remitted to the pension fund; or
- (b) the solvency deficiency for the individual transfer is less than 5% of the Year's Maximum Pensionable Earnings for that year and the aggregate of transfer deficiencies for all transfers made since the last review date do not exceed 5% of the market value of the assets of the plan at that time.

(8) Where the transfer value calculated in (2) is less than the commuted value, the balance including interest, calculated at the rate credited to member contributions under section 9, shall be transferred by the administrator within 5 years of the date of the initial transfer and any transfer subsequent to the initial transfer shall be in accordance with subsection (7).

(9) Any amounts transferred under a reciprocal transfer agreement that has been filed with the superintendent is subject to subsections (2) through (8).

(10) For the purpose of determining a transfer value under Part VI of the Act, the value of any pension benefit payable to a spouse of a member shall be based on the age of the spouse of the member at the date of termination, and no allowance need be made for the possibility of the member acquiring a different spouse after the date of termination.

(11) An administrator of a pension plan shall not make payment

(a) under subparagraphs 40(1)(a)(ii) and 40(2)(a)(ii) of the Act, unless the retirement savings arrangement meets the requirements of the superintendent; or

(b) under subparagraphs 40(1)(a)(iii) and 40(2)(a)(iii) of the Act, unless the contract to purchase the deferred life annuity meets the requirements of the superintendent and payments under the deferred life annuity shall not commence before the earliest date that the member may retire under the plan.

(12) The payment or transfer of the transfer value shall be made within 180 days of the date of determination of the commuted value.

[114/96 s15; 24/17 s1](#)

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Exercise of options

16. (1) A member or former member of a pension plan who makes an election under section 40 of the Act shall deliver a completed direction to the administrator within 60 days following cessation of membership or a person entitled to make an election under Part VI of the Act shall deliver a completed direction to the administrator, within 60 days following receipt of notice of entitlement of member.

(2) The administrator shall comply with an election made under subsection (1) within 60 days of receipt of all information required by the administrator to comply with the election.

(3) The administrator shall not transfer the commuted value or a portion of a pension benefit except where the transferee agrees to administer the amount transferred as a pension benefit in accordance with the Act.

[114/96 s16](#)

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Limitations for transfer

17. Where the transfer value does not exceed the limitations for transfer under the *Income Tax Act* (Canada), the transfer value may be transferred only into a life income fund or a locked in retirement account or other retirement arrangement approved by the superintendent.

[114/96 s17](#)

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Retirement savings arrangement

18. (1) The superintendent shall, for the purpose of this section, establish and maintain a list that contains

- (a) the name of every savings institution and insurance company that has filed a certified specimen contract that complies with the Act, these regulations and the requirements of the superintendent; and
 - (b) a description of each certified specimen contract filed with the superintendent that complies with the Act, these regulations and the requirements of the superintendent.
- (2) A savings institution or insurance company shall not transfer or accept a transfer unless
- (a) the contract used for the transfer is in the form of a certified specimen contract, as amended where applicable, that has been filed with the superintendent and complies with the Act, these regulations and the requirements of the superintendent; and
 - (b) the savings institution or insurance company
 - (i) has been notified in writing by the superintendent that the name and specimen contract are on the list, and
 - (ii) has not been notified in writing by the superintendent that either its name or its specimen contract has been removed from the list.
- (3) For the purpose of this section, a certified specimen contract, or an amendment to a certified specimen contract, is considered to meet the requirements of subsection (2) if the superintendent has provided written notice of compliance to the savings institution or insurance company that filed it.
- (4) The superintendent may, without affecting the duties or liability of a savings institution or insurance company in relation to any transfer or contract, remove the savings institution or insurance company, or any certified specimen contract in name, from the list established under subsection (1) if
- (a) the savings institution or insurance company is using a contract or an amendment to a contract, that is not in the form of the certified specimen contract; or
 - (b) the savings institution or insurance company has acted in breach of any of its obligations under this section.
- (5) A copy of the contract, including contractual obligations required by the superintendent, shall be provided to the applicant at the time the application to transfer the locked in money is completed.

[114/96 s18](#)

PART V SURPLUS AND TRANSFER OF PLAN ASSETS

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Calculation of surplus

19. For purpose of calculating surplus under a continuing pension plan

- (a) "assets" shall mean the market value of investments held by the pension fund plus any cash balances and accrued or receivable income items; and
- (b) "liabilities" shall mean the greater of the going concern liabilities and the liabilities determined under section 11.

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Surplus withdrawal application continuing plan

20. (1) An application by an employer for the consent of the superintendent to a surplus withdrawal from a continuing pension plan shall be accompanied by

- (a) a certified copy of the notice as required by the superintendent, details on the classes of persons who received notice, and the date the last notice was distributed; and
- (b) a current report prepared on the basis of a going concern valuation demonstrating that a surplus exists and that there are no special payments required to be made to the pension fund.

(2) The superintendent shall not consent to surplus withdrawal by the employer from a continuing pension plan unless

- (a) the superintendent is satisfied, based on reports provided with the application, that the plan has a surplus;
- (b) the plan provides for the withdrawal of surplus by the employer while the plan continues in existence, or the applicant satisfies the superintendent that the applicant is otherwise entitled to withdraw the surplus;
- (c) funds amounting to the greater of
 - (i) an amount equal to at least 2 years of the employer's current service costs, and
 - (ii) an amount equal to 25% of the liabilities of the pension plan calculated on the basis of a solvency valuation

is retained in the pension fund as surplus; and

- (d) the applicant and the plan are in compliance with all other requirements under the Act regarding the payment of surplus money out of a pension fund.

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Contribution holidays

21. An employer may take a contribution holiday if a pension plan has a surplus and permits a contribution holiday, provided that the contribution holiday does not reduce the surplus to less than 10% of the value of the liabilities under the plan, determined as of the last review date calculated on the basis of a solvency valuation.

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Surplus withdrawal application - plan termination

22. The superintendent shall not consent to an application for surplus withdrawal in respect of a pension plan that is being terminated, in whole or in part, unless

- (a) the superintendent is satisfied, based on the reports provided that the plan has a surplus;
- (b) the plan provides for payment of surplus to the employer on termination of the plan;
- (c) all liabilities of the plan, calculated for the purpose of the termination of the plan, have been paid;
- (d) the application is accompanied by a certified copy of the notice as required by the superintendent, details on the classes of persons who received the notice, and the date the last notice was distributed; and
- (e) the applicant and the plan are in compliance with all other requirements under the Act in respect of the payment of surplus money out of a pension fund.

[114/96 s22](#)

PART VI TERMINATION

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Entitlement on plan termination

23. (1) An administrator of a pension plan shall comply with an election made by a person on the termination of the plan no later than 30 days following receipt of the election or, if later, 30 days following receipt of notice that the termination report has been approved by the superintendent.

(2) Where a person entitled to receive a notice of entitlement as directed by the superintendent dies before receipt of the statement or forwarding of the election to the administrator of the plan and the date of death is before the expiry date of the period during which the recipient was entitled to elect an option, the spouse of the recipient on the date of death is entitled

- (a) to receive a lump sum payment equal to the commuted value which the recipient was entitled to transfer under subsection 40(3) of the Act; or
- (b) to an immediate or deferred pension benefit, the commuted value of which is at least equal to the commuted value referred to in paragraph (a).

(3) If the person entitled to a statement referred to in subsection (2) does not have a spouse on the date of death, the recipient's named beneficiary or personal representative is entitled to be paid an amount equal to the lump sum payment referred to in paragraph (2)(a).

[114/96 s23](#)

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Reduction of benefits upon termination of plan

24. For the purpose of section 66 of the Act, the basis for the reduction of benefits, the methods of allocating and distributing assets, and the priorities for determining benefits is one of the following:

- (a) a method that meets the following conditions:
 - (i) assets shall be allocated firstly to provide for benefits equal to the value of contributions, with interest made by and transferred from another plan in respect of members and former members,

- (ii) to the extent that assets have not been allocated under subparagraph (i), assets shall be allocated to provide for accrued benefits in respect of which no unfunded liability was established or, if an unfunded liability was established, that liability has been amortized at the date of termination of the plan, and
 - (iii) to the extent that assets have not been allocated under subparagraphs (i) and (ii), assets shall be allocated to provide for accrued benefits in respect of which a going concern unfunded liability or solvency deficiency has not been amortized at the date of the termination of the plan;
- (b) a method that meets the following conditions:
- (i) assets shall be allocated firstly to provide for benefits equal to the value of contributions, with interest made by and transferred from another plan in respect of members and former members,
 - (ii) to the extent that assets have not been allocated under subparagraph (i), assets shall be allocated to provide for accrued benefits established 2 or more years before the date of termination, provided that the superintendent may relegate the priority of any benefit improvements made in the last 5 years to a more recent effective date selected by the superintendent, and
 - (iii) to the extent that assets have not been allocated under subparagraphs (i) and (ii), assets shall be allocated to provide for the accrued benefits in order of the date in which the benefits were established, starting with the earliest date; and
- (c) a method that is approved in writing by the superintendent.

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Payments upon plan termination

25. Where an employer is required or liable to make payments into a pension fund in accordance with subsection 61(1) of the Act, the employer shall make those payments within 30 days of the date of termination of the plan.

[103/11 s1](#)

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Payments upon plan termination to fund benefits

25.1 (1) The amount required to be paid under subsection 61(2) of the Act shall be divided into equal payments that are calculated over a period of not more than 5 years commencing from the date of termination of the pension plan.

(2) Payments shall be made at least quarterly, with interest at the solvency valuation rate, commencing from the date of termination of the pension plan.

(3) Notwithstanding subsection (2), the first payment is due no later than 2 weeks following the date that the report required by the superintendent under subsection 60(2) of the Act is filed by the administrator of the pension plan.

(4) Notwithstanding subsections (2) and (3), where the report required by the superintendent under subsection 60(2) of the Act is filed by the administrator of the pension plan later than 6 months after the date of termination of the pension plan, the payment for the quarter in which the

report is filed and earlier quarters is due no later than 2 weeks following the date that the report is filed.

(5) An administrator of a pension plan shall continue to file annual information returns and actuarial valuation reports as required under the Act until the amount under subsection (1) has been paid in full.

(6) A report under subsection (5) shall show

- (a) the gain or the loss in the pension plan since the valuation date of the immediately preceding report as a result of differences between the actual experience and the experience anticipated by the assumptions made in the previous report; and
- (b) where a loss referred to in paragraph (a) is shown, the amount required to liquidate the loss within the remainder of the period of not more than 5 years commencing from the date of termination of the pension plan.

(7) The loss shown in a report under subsection (6) shall be

- (a) funded separately under subsection 61(2) of the Act and not combined with the amount under subsection (1) of these regulations; and
- (b) paid by equal payments made at least quarterly, with interest at the solvency valuation rate, within the remainder of the period of not more than 5 years commencing from the date of termination of the pension plan.

[103/11 s2](#)

PART VII MARRIAGE BREAKDOWN

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Interpretation

26. (1) In this Part words and phrases have the same meaning as in Part VI of the Act.

(2) Where all or part of a pension benefit under a pension plan of a member is required to be distributed to that person's spouse under a court order or separation agreement, a notice of intention and a certified copy of the court order or agreement shall be filed with the administrator before the administrator may effect a division or distribution.

(3) In the case of a court order, an administrator shall not administer a division of a pension benefit in accordance with a court order until all appeals have been finally determined or the time for appealing has expired.

[114/96 s26](#)

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Division

27. (1) Except where a claim of a spouse has been filed jointly by the member and his or her spouse, on receiving a claim of spouse, an administrator shall, within 30 days of receipt of the claim, provide a copy of the claim to the member and provide, to both the member and his or her spouse, a notice of entitlement of spouse containing the following information:

- (a) where the member is not entitled to a deferred pension benefit under a pension plan, the value of the pension benefit available for transfer as of the date of marriage breakdown;
- (b) for a defined benefit plan, where a pension benefit has not matured, the commuted value of the pension benefit available for transfer as of the date of marriage breakdown;
- (c) for a defined contribution plan, where a pension benefit has not matured, the accumulated value of the member's account available for transfer as of the date of marriage breakdown;
- (d) for a defined benefit plan, where a pension benefit has matured, the commuted value of the pension benefit available for transfer as of the date of marriage breakdown;
- (e) transfer options available to the spouse;
- (f) options to take a separate pension from the plan available to the spouse; and
- (g) a copy of the last annual statement sent to the member.

(2) Within 60 days of receiving the notice of entitlement of spouse, the spouse shall deliver a completed direction to the administrator indicating the election chosen.

(3) Where a member objects to the division on one of the grounds set out in subsection (4), a member shall deliver, within 60 days of receiving the notice of entitlement of spouse, a notice of objection of member to the administrator including documentary evidence to establish the grounds for objection.

(4) The grounds for objection under subsection (3) are that

- (a) the court order or separation agreement has been varied or is of no force or effect;
- (b) the terms of the court order or separation agreement have been or are being satisfied by other means; and
- (c) proceedings have been commenced in a court of competent jurisdiction in Canada to appeal or review the court order or to challenge the terms of the separation agreement.

(5) Subject to subsection (3), an administrator shall comply with the direction made under subsection (2) within 60 days of receipt of all information required by the administrator to comply with the direction.

(6) Where section 53 of the Act applies, an administrator shall comply with the joint direction of the spouse and member or court order within 60 days of receipt of all information required by the administrator to comply with the direction or court order.

[114/96 s27](#)

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Fees

28. The fee to effect a division under Part VI of the Act to be paid to a pension plan by the spouse and member shall not exceed the following:

- (a) \$150 for a defined contribution plan;
- (b) \$500 for a defined benefit plan; and

(c) \$650 for a pension plan containing defined contribution and defined benefit provisions.

[114/96 s28](#)

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Commuted value

29. (1) Where the calculation of the commuted value of a pension benefit or a portion of a pension benefit is required for an unmatured pension in a defined benefit or a defined contribution plan, the member's pension is calculated as if the member terminated employment on the date of election and in accordance with the Canadian Institute of Actuaries Recommendations for the Computation of Transfer Values from Registered Pension Plans.

(2) The commuted value of a pension benefit that is not a deferred pension benefit or an immediate pension benefit under a pension plan shall be determined as if the member had terminated employment on the date of marriage breakdown.

[114/96 s29](#)

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Proportionate share

30. (1) The proportionate share of a matured pension under a defined contribution plan or of a matured or unmatured pension under a defined benefit plan shall be determined in accordance with the following formula:

$$\text{proportionate share} = P(A/B)$$

where:

A = pensionable service accumulated by the member from the date of marriage to the date of marriage breakdown, excluding any pensionable service for that period purchased by and credited to the member after the date of marriage breakdown;

B = total pensionable service accumulated by the member to the date that is the earlier of

- (a) the date the spouse's share was transferred,
- (b) the date the limited member begins to receive a separate pension, and
- (c) the date the limited member begins to receive a payment of benefits from the plan;
and

P = percentage of the pension benefit to be credited to the spouse under the court order or separation agreement.

(2) The proportionate share of an unmatured pension under a defined contribution plan shall be determined in accordance with the following formula:

$$\text{proportionate share} = P(A - B)$$

where:

A = the total of

- (a) contributions to the plan to the credit of the member on the date of marriage breakdown, and
- (b) net investment returns allocated, or that are to be allocated, in respect of those contributions to the date the spouse's share is transferred by the plan;

B = the total of

- (c) contributions to the credit of the member on the date of marriage of the member and spouse, and
- (d) the net investment returns allocated, or that are to be allocated, in respect of those contributions to the date the spouse's share is transferred by the plan; and

P = percentage of the pension benefit to be credited to the spouse under the court order or separation agreement.

[114/96 s30](#)

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Limited members - deferred

31. (1) An administrator may pay out a cash settlement, instead of a division of a pension benefit, to a limited member where the value of the annual benefit payable to the limited member meets the requirements of paragraphs 44(2)(b) and (c) of the Act.

- (2) An administrator is required, at the time of the member's retirement to
 - (a) obtain the commuted value of the member's pension as of the pension commencement date of the member;
 - (b) determine the limited member's share by applying the proportionate share, calculated in accordance with these regulations, of the commuted value of the member's pension benefit;
 - (c) transfer the limited member's share of the member's pension benefit to a separate account in the plan in the name of the limited member;
 - (d) adjust the value of the member's pension benefit in accordance with these regulations; and
 - (e) provide an accounting to both the member and limited member with respect to the recalculation of the pension benefits.

(3) Where a member terminates employment prior to the pension commencement date of the limited member, the limited member is entitled to a share of a termination benefit under the plan based on the limited member's proportionate share of the member's pension benefit calculated in accordance with these regulations.

(4) In the event of the wind-up of a pension plan before the pension commencement date of the limited member, the limited member is entitled to a payment of a share of any wind-up benefit paid to the member based on the limited member's proportionate share of the member's pension benefit in accordance with these regulations.

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Limited members - immediate

32. An administrator is required to
- (a) obtain a recalculation of the member's pension as of the date of marriage breakdown;
 - (b) determine the limited member's share by applying the proportionate share, calculated in accordance with these regulations, to the recalculated value;
 - (c) transfer the limited member's share of the member's pension benefit to a separate account in the plan in the name of the limited member;
 - (d) readjust the member's pension benefit in accordance with these regulations; and
 - (e) provide an accounting to both the member and limited member with respect to the recalculation of the pension benefits.

[114/96 s32](#)

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Adjustment of pension

33. (1) Where a spouse has transferred his or her share from a pension plan or becomes a limited member of the plan, a member's pension or pension benefit shall be adjusted as follows:

- (a) if the member is entitled to a deferred pension under the plan, the member's pensionable service shall be reduced by the following amount of service:

$$R = P \times S$$

where

R = amount total service is to be reduced in calculating the member's benefit after the transfer or division of the pension benefit;

P = the proportionate share calculated in accordance with these regulations; and

S = the total service of the member including service before, during and after the marriage; and

- (b) if the member is not entitled to a deferred pension benefit under the plan, the amount paid or transferred to the credit of the spouse or spouse's estate is deducted from the commuted value of the pension or pension benefit at the time of adjustment.

(2) An adjustment under subsection (1) does not affect a member's eligibility in relation to a pension or pension benefit under a pension plan.

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Limitation

34. The aggregate of
- (a) the commuted value of the pension benefit paid to a member; and

(b) the commuted value of the pension benefit paid to the spouse of a member

under this Part shall not be greater than the commuted value of the pension or pension benefit that would have been payable to the member had the marriage breakdown not occurred.

[114/96 s34](#)

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Information from plan

35. (1) A limited member or a spouse who has filed a notice of intention is entitled to receive from the administrator

(a) at the time of marriage breakdown; and

(b) on an annual basis

information in respect of a pension plan in accordance with these regulations and as required by the superintendent.

(2) Notwithstanding subsection (1), on or before December 31, 1997, an administrator is not required to provide information under subsection (1) unless the spouse or limited member requests the information in writing or a pension plan provides for the disclosure of information on an annual basis.

(3) An administrator shall give a limited member, until the limited member is entitled to receive a separate pension under a pension plan, 30 days' advance written notice of any transaction relating to the member's pension benefit under the plan by reason of the retirement or death of the member or a direction given to the plan by the member.

(4) When a limited member is entitled to receive a separate pension from a pension plan, the limited member shall be treated as a member of the plan for information, disclosure and reporting purposes and is no longer entitled to information under subsection (1) regarding the pension benefit of the member.

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PART VIII GENERAL

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Prescribed classes

36. The prescribed classes of employees referred to in the Act are employees who fall within any of the following classes:

(a) employees who are paid a salary;

(b) employees who are paid on an hourly basis;

(c) employees who are members of a trade union;

(d) employees who are not members of a trade union;

(e) supervisory employees;

- (f) management employees;
- (g) executive employees;
- (h) employees who are officers of the employer;
- (i) employees who are significant shareholders of the employer; or
- (j) employees belonging to other identifiable group of employees as is acceptable to the superintendent.

[114/96 s36](#)

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Exception from section 33 of the Act

37. A prescribed circumstance referred to in section 33 of the Act is a division of a pension benefit in accordance with Part VI of the Act.

[114/96 s37](#)

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Disability

38. For the purpose of paragraph 44(2)(a) of the Act, disability means a mental or physical disability that is likely to shorten considerably the life expectancy of a member or former member, that has been verified in writing by a medical practitioner.

[114/96 s38](#)

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Interpretation of investment regulations

38.1 (1) In this section and section 39,

- (a) "federal regulations" means the *Pension Benefits Standards Regulations, 1985* (Canada); and
- (b) "Schedule III" means Schedule III to the federal regulations.

(2) In interpreting Schedule III for the purpose of section 39, expressions used in Schedule III and defined in the *Pension Benefits Standards Act, 1985* (Canada) or the federal regulations have the meanings assigned to them by that federal Act or those federal regulations, as the case may be, except for the references in subsection (3).

(3) A reference in Schedule III to

- (a) "administrator" shall be read as a reference to "administrator" as defined in the Act;
- (b) "employee" shall be read as a reference to "employee" as defined in the Act;
- (c) "employer" shall be read as a reference to "employer" as defined in the Act;
- (d) "insured plan" shall be read as a reference to "insured plan" as defined in these regulations;

- (e) "member" shall be read as a reference to "member" as defined in the Act;
- (f) "pension benefit" shall be read as a reference to "pension benefit" as defined in the Act;
- (g) "plan" shall be read as a reference to "pension plan" as defined in the Act;
- (h) "spouse or common-law partner" shall be read as a reference to "principal beneficiary" as defined in the Act; and
- (i) "superintendent" shall be read as a reference to "superintendent" as defined in the Act.

(4) The references to "1994" in subparagraphs 12(1)(a)(ii), 13(1)(a)(ii) and 14(a)(ii) of Schedule III shall be read as "1996".

(5) The references to "filed under subsection 12(2) of the Act" in subsections 12(3) and 13(3) of Schedule III shall be read as "filed with the superintendent".

[29/13 s2](#)

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Investment regulations

39. (1) Notwithstanding the provisions of a pension plan or any instrument governing a pension plan, the assets of the plan shall be invested and the investments made in accordance with Schedule III and this section.

(2) Where a provision of Schedule III differs from a corresponding provision under the laws of a designated province, the superintendent may, in the case of a pension plan having members in that designated province, apply, in whole or in part, that corresponding provision instead of the provision of Schedule III.

(3) An administrator or fundholder of a pension plan shall maintain a current record clearly identifying each of the plan's investment and the name in which each investment is registered.

(4) Every pension plan shall provide that the money of the pension fund are to be

(a) invested in accordance with Schedule III; and

(b) invested

(i) in a name that clearly indicates that the investment is held in trust for the plan and, where the investment is capable of being registered, registered in that name,

(ii) in the name of a financial institution or a nominee of it, in accordance with a custodial agreement or trust agreement, entered into on behalf of the plan with the financial institution, that clearly indicates that the investment is held for the plan, or

(iii) in the name of The Canadian Depository for Securities Limited, or a nominee of it, in accordance with a custodial agreement or trust agreement, entered into on behalf of the plan with a financial institution, that clearly indicates that the investment is held for the plan.

(5) For the purposes of subsection (4), "custodial agreement" means an agreement providing that

(a) an investment made or held on behalf of a pension plan under the agreement

- (i) constitutes part of the plan's pension fund, and
- (ii) shall not constitute an asset of the custodian or nominee; and

(b) records shall be maintained by the custodian that are sufficient to allow the ownership of any investment to be traced to the plan.

(6) The administrator of a pension plan shall, before the later of July 1, 1997 and the day on which the plan is registered, establish, on behalf of the plan, a written statement of investment policies and procedures in respect of the plan's portfolio of investments and loans, having regard to all factors that may affect the funding and solvency of the plan and the ability of the plan to meet its financial obligations, including all of the following:

- (a) categories of investments and loans, including derivatives, options and futures;
- (b) diversification of the investment portfolio;
- (c) asset mix and rate of return expectations;
- (d) liquidity of investments;
- (e) the lending of cash or securities;
- (f) the retention or delegation of voting rights acquired through investments;
- (g) the method of, and the basis for, the valuation of investments that are not regularly traded at a public exchange; and
- (h) related party transactions permitted under section 17 of Schedule III and the criteria to be used to establish whether a transaction is nominal or immaterial to the plan.

(7) The statement of investment policies and procedures referred to in subsection (6) shall include a description of the factors referred to in that subsection and the relationship of those factors to those policies and procedures.

(8) If a pension plan is a defined benefit plan, the administrator shall submit the statement of investment policies and procedures referred to in subsection (6) to the actuary of the plan on or before the later of

- (a) 60 days after the day on which the statement is established; and
- (b) the day on which the actuary is appointed.

(9) Investments made on or before January 1, 1997 that are not in compliance with this section, Schedule III and the investment policy of the plan

- (a) may be retained until the earlier of the fixed maturity date or January 1, 2000 if they are investments with a fixed maturity date; and
- (b) must be in compliance no later than January 1, 2000 if they are not investments with a fixed maturity date.

(10) Every investment made after January 1, 1997 must comply with this section, Schedule III and the investment policy of the plan.

(11) An administrator of a pension plan shall review and confirm or amend the statement of investment policies referred to in subsection (6) at least once in each plan year.

(12) Where a pension plan is a defined benefit plan, the administrator shall submit any amendments to the investment policy statement to the actuary within 60 days of an amendment to the statement.

[114/96 s39; 29/13 s3](#)

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Designated provinces

40. The following provinces and territories of Canada are designated as provinces or territories in which there is in force legislation substantially similar to the Act:

- (a) the Province of Alberta ;
- (b) the Province of British Columbia ;
- (c) the Province of Manitoba ;
- (d) the Province of New Brunswick ;
- (e) the Northwest Territories ;
- (f) the Province of Nova Scotia ;
- (g) the Province of Ontario ;
- (h) the Province of Quebec ;
- (i) the Province of Saskatchewan ; and
- (j) the Yukon Territory .

[114/96 s40](#)

PART IX APPLICATION

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Application to public sector plans

41. (1) The Act applies to all public sector pension plans.

(2) Notwithstanding subsection (1), the following provisions of the Act shall not apply to the Uniformed Services Pension Plan, Teachers' Pension Plan and Members of the House of Assembly Pension Plan:

- (a) subsection 20(1) with respect to void amendments;
- (b) section 35 with respect to funding;
- (c) section 39 with respect to the 50% rule;
- (d) section 40 with respect to portability;
- (f) section 41 with respect to pre-retirement death benefits;

- (g) the 2 year period of time prescribed for required vesting under subsection 43(1); and
- (h) paragraph 48(2)(a) with respect to marriage breakdown.

(3) Notwithstanding subsection (1), the following provisions of the Act shall not apply to the Public Service Pension Plan:

- (a) subsection 20(1) with respect to void amendments;
- (b) section 35 with respect to funding;
- (c) section 39 with respect to the 50% rule; and
- (d) the 2 year period of time prescribed for required vesting under subsection 43(1).

(4) Notwithstanding subsection (1), the Memorial University Pension Plan is

- (a) exempt for the period from April 1, 2015 to March 31, 2016 from the requirement that the employer pay an amount under paragraph 12(3)(d) of these regulations;
- (b) exempt from the requirement under paragraph 12(3)(c) of the regulations to liquidate the going concern unfunded liability arising from the cost of providing indexed benefits in relation to past service under section 24.1 of the *Memorial University Pensions Act* within the prescribed 15 year period and is instead permitted to liquidate this liability within 40 years from the day that indexing is effective; and
- (c) exempt for the period from April 1, 2015 to March 31, 2016 from the requirement that the employer pay an amount under paragraph 12(3)(c) of the regulations.

(4.1) Notwithstanding paragraphs (4)(a) and (c), in the event of the termination of the Memorial University Pension Plan, an amount that would have been payable under paragraphs 12(3)(c) and (d) had the exemptions not been given shall be paid by the employer to the fund.

(4.2) Notwithstanding paragraph 4(c), money required to be paid by the employer during the period from April 1, 2015 to March 31, 2016 shall be added to the end of the going concern special payment schedules in effect on April 1, 2015.

(4.3) The going concern special payment schedules in effect on April 1, 2015 based on the actuarial report of December 31, 2013 shall recommence on April 1, 2016 and shall be adjusted to add

- (a) one year of accrued interest; and
- (b) one additional year for payment.

(4.4) The interest referred to in subsection (4.3) shall be based on the going concern discount rate from the December 31, 2013 actuarial report.

(5) Notwithstanding subsection (1), the following provisions of the Act shall not apply to the Provincial Court Judges' Pension Plan:

- (a) section 35 with respect to funding; and
- (b) section 39 with respect to the 50% rule.

[114/96 s41](#); [6/01 s1](#); [135/03 s1](#); [122/04 s1](#); [40/06 s1](#); [51/09 s1](#); [2/13 s1](#); [13/16 s1](#)

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Exemptions from the Act or regulations

42. (1) A pension plan established before January 1, 1997 is exempt from the requirements of section 38 of the Act where the superintendent considers, and notifies the administrator in writing, that the provisions of the plan relating to the allocation and distribution of its surplus assets during the continuation of the plan or on termination, or both are sufficiently unclear to enable amendment of the plan in order that the plan may comply with section 38 of the Act.

(2) Where

(a) a plan provides a benefit in respect of a person entitled to a benefit and the benefit is in excess of the maximum benefit or contribution limit that could be applicable to the plan under the *Income Tax Act* (Canada); or

(b) the commuted value of a benefit is in excess of the maximum limit that can be transferred to another plan or to a retirement savings arrangement under the *Income Tax Act* (Canada),

the amount of the pension benefit, surplus asset allocation or commuted value that is in excess of that maximum limit is exempt from section 44 of the Act and shall not be treated as locked in for the purpose of these regulations.

(3) Where a plurality of the members of a pension plan is employed in a designated province that plan may be excepted, subject to agreement with the designated province from a registration or audit under the Act, and for the purpose of ascertaining where the plurality of the members is employed, members not employed in the province or a designated province shall not be counted.

[114/96 s42](#)

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Exemption

42.1 (1) Notwithstanding paragraph 12(3)(d), a solvency deficiency limited to the value of the benefit commonly referred to as the 45 and 10 vested termination benefit under section 4.5(a) of the Pension Plan for Employees of the Iron Ore Company of Canada and Associated and Subsidiary Companies Unionized Employees Text as amended and re-stated as of March 1, 1999 shall be paid by the employer to the pension fund at the time the liability becomes due under the pension plan.

(2) Notwithstanding subsection (1), in the event of the termination of the plan, an amount that would have been payable under paragraph 12(3)(d) had the exemption not been given shall be paid by the employer to the fund.

[43/03 s2](#)

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Municipalities pension plan exemption

42.2 (1) The Newfoundland and Labrador Municipal Employees Benefits Inc. Pension Plan shall be exempt from the requirement of paragraph 12(3)(d) for the period December 31, 2010 to December 31, 2015 in respect of the solvency deficiency of the plan.

(2) Notwithstanding subsection (1), in the event of the termination of the plan, an amount that would have been payable under paragraph 12(3)(d) had the exemption not been given shall be paid by the participating employers to the fund.

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Town of Happy Valley-Goose Bay retirement plan exemption

42.3 (1) The Retirement Plan for Employees of the Town of Happy Valley-Goose Bay is exempt from the requirement of paragraph 12(3)(d) for the period of December 31, 2015 to December 31, 2020 in respect of the solvency deficiency of the plan.

(2) Notwithstanding subsection (1), in the event of the termination of the plan, an amount that would have been payable under paragraph 12(3)(d) had the exemption not been given shall be paid by the Town of Happy Valley-Goose Bay to the fund.

[13/11 s1](#); [126/13 s1](#); [24/17 s2](#)

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City of St. John's retirement benefit plan exemption

42.4 (1) The Retirement Benefit Plan for the Employees of the City of St. John's is exempt from the requirement of paragraph 12(3)(d) for the period of December 31, 2015 to December 31, 2020 in respect of the solvency deficiency of the plan.

(2) Notwithstanding subsection (1), in the event of the termination of the plan, an amount that would have been payable under paragraph 12(3)(d) had the exemption not been given shall be paid by the City of St. John's to the fund.

[127/13 s1](#); [25/17 s1](#)

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St. John 's Transportation Commission exemption

42.5 (1) The Pension Plan for the Union Employees of the St. John's Transportation Commission and the Pension Plan for the Non-Union Employees of the St. John's Transportation Commission are exempt from the requirement of paragraph 12(3)(d) for the period of December 31, 2016 to December 31, 2020 in respect of the solvency deficiency of the plans.

(2) Notwithstanding subsection (1), in the event of the termination of either plan, an amount that would have been payable under paragraph 12(3)(d) had the exemption not been given shall be paid by the St. John's Transportation Commission to the fund.

[53/15 s1](#); [25/17 s2](#)

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Town of Grand Falls-Windsor exemption

42.6 (1) The Defined Benefit Retirement Plan for Employees of the Town of Grand Falls-Windsor is exempt from the requirement of paragraph 12(3)(d) for the period of December 31, 2013 to December 31, 2016 in respect of the solvency deficiency of the plan.

(2) Notwithstanding subsection (1), in the event of the termination of the plan, an amount that would have been payable under paragraph 12(3)(d) had the exemption not been given shall be paid by the Town of Grand Falls-Windsor to the fund.

**PART X
REPEAL AND COMMENCEMENT**

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Repeal

43. The Pension Benefits Act Regulations, 1985, Newfoundland Regulations 279/84, 3/91, 54/94, 63/95, 74.1/95 and 41/96, are repealed.

[114/96 s43](#)

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Commencement

44. These regulations come into force the date of commencement of the *Pension Benefits Act, 1997*.

[114/96 s44](#)

Schedule

[Rep. by 29/13 s4]

[29/13 s4](#)