

**COMMENTARY GUIDE FOR THE PROPOSED AGREEMENT RESPECTING  
MULTI-JURISDICTIONAL PENSION PLANS**

[Including Text from the Proposed Agreement]

**Purpose of the Commentary Guide:**

*This commentary guide provides explanatory notes on the provisions of the proposed Agreement Respecting Multi-Jurisdictional Pension Plans. This document contains the text of each provision in the proposed Agreement, followed by explanatory notes for each respective provision, as well as examples where necessary.*

**RECITALS****Text from Agreement:**

- I. Each signatory to this Agreement represents the government of a legislative jurisdiction in Canada and is authorized by the laws of the signatory's jurisdiction to sign this Agreement.
- II. A pension plan may be subject to the pension legislation of more than one jurisdiction and may be subject to the supervision of more than one jurisdiction's pension supervisory authority, by reason of the nature or place of the plan members' residence or employment or the nature of the business, work or undertaking of the members' employer.
- III. Pension plans that are subject to the pension legislation of more than one jurisdiction play a significant role in providing retirement income to many Canadians. To establish an efficient and transparent regulatory environment for such plans, the governments that are party to this Agreement deem it desirable to specify the rules that apply to such plans and allow, to the extent provided for in this Agreement, a single pension supervisory authority to exercise with respect to any such pension plan all of the supervisory and regulatory powers to which such plan is subject.
- IV. The laws of the jurisdictions whose governments are party to this Agreement allow for the incorporation of rules for pension plans enacted by Canadian legislative jurisdictions or as otherwise set out in this Agreement, as well as the reciprocal application of legislative provisions and administrative powers by the pension supervisory authorities concerned.
- V. The governments that are party to this Agreement agree as follows:

**Explanatory Notes:**

*Recitals introduce the provisions of, and set out the rationale for, the Agreement.*

*In Canada, the federal-provincial division of legislative powers is set out in the Constitution Act, 1867 (formerly the British North America Act, 1867), which defines the scope of the power of the federal government and the powers of provincial governments. As a result of this constitutional division of powers, the responsibility for regulating pension plans in Canada is shared between the federal and provincial governments. Provincial pension legislation applies to pension plans with members employed in a particular province. Federal pension legislation applies to members employed in sectors that fall within federal areas of constitutional authority (e.g., the banking and telecommunications sectors), regardless of the province in which members are employed. Multi-jurisdictional pension plans can fall within both provincial and federal regulators' jurisdictions. In the absence of an inter-governmental agreement, multi-jurisdictional pension plans would need to register in each jurisdiction in which*

*they have members, which would be a significant regulatory and administrative burden for these plans.*

*The persons eligible to sign the Agreement on behalf of a jurisdiction's government are determined by the pension legislation of each jurisdiction.*

**PART I  
GENERAL PROVISIONS**

**Text from Agreement:**

**SECTION 1  
DEFINITIONS & SCHEDULES**

**Definitions**

1. (1) For the purposes of this Agreement, unless the context indicates a different meaning:

“active member” means, in relation to a pension plan, a person who:

- (a) is accruing benefits under the plan; or
- (b) is no longer accruing benefits under the plan, but who is deemed by the terms of the plan or the pension legislation that ~~applies~~would apply to the person if this Agreement did not exist to have the same status as an active member of the plan as a person determined under clause (a); (« participant actif »)

“pension legislation” means, in relation to a jurisdiction, the legislation identified in Schedule A in respect of that jurisdiction and any subordinate legislation made under that legislation, all as amended or substituted from time to time; (« loi sur les régimes de retraite »)

“pension plan” means, in respect of a jurisdiction, any plan that is subject to the jurisdiction’s pension legislation; and (« régime de retraite »)

“pension supervisory authority” means the government ministry, department or agency of a jurisdiction that has supervisory or regulatory powers with respect to pension plans under the pension legislation of the jurisdiction. (« organisme de surveillance »)

**Schedules**

(2) The following attached Schedules form part of this Agreement:

- (a) Schedule A – Pension Legislation; and
- (b) Schedule B – Matters Covered by Incorporated Legislative Provisions.

**Explanatory Notes:**

*The definitions establish the meaning of certain terms used throughout the Agreement.*

*Defining who qualifies as an “active member” of a pension plan is necessary because the number of active plan members related to each jurisdiction is used to determine which jurisdiction’s pension supervisory authority the plan must register with under section 3 of the Agreement and, as a result, how the various jurisdictions’ pension legislation will apply to the plan.*

*Clause (b) of the definition of “active member” accounts for situations where a person is not accruing benefits under a pension plan but is deemed by the terms of the plan or the applicable pension legislation to have the same status under the plan as a person who is accruing benefits under the plan.*

*Please note that while definitions for individuals such as retirees, deferred vested members and surviving spouses are not included in the Agreement, such individuals are included in certain provisions of the Agreement which relate to “any person who has rights or benefits under the plan”.*

*The schedules to the Agreement are used to list items that are included in, and form part of, the Agreement but are appropriately set out separately from the main body of the Agreement. Schedule A lists all of the pension standards legislation in force in Canada. Schedule B lists all of the matters contained in pension legislation that are, under the terms of the Agreement, subject to the legislation of the jurisdiction of the major authority for a pension plan.*

**Examples:**

*The following are some examples of when individuals would qualify as “active members” of a pension plan in accordance with clause (b) of the definition of “active member”. Please note that the following examples do not set out all of the circumstances under which an individual may qualify as an active member of a pension plan in accordance with clause (b) of the definition.*

- 1) An employer sponsors a multi-jurisdictional pension plan with active members employed in Ontario. The employer sells a portion of its operations in Ontario and as a result, the affected Ontario employees become employees of a successor employer. The successor employer sponsors its own pension plan and the affected employees become members of the successor employer’s plan. The sale transaction does not, however, result in the transfer of assets and liabilities from the original employer’s pension plan to the successor employer’s plan in relation to the affected employees. Under Ontario’s legislation and for the purposes of the Agreement, the affected employees will continue to qualify as active members of the original employer’s pension plan in relation to the benefits they earned under that plan, and will also*

*qualify as active members of the successor employer's pension plan with respect to benefits earned under that plan.*

- 2) *An employer sponsors a multi-jurisdictional pension plan that is also a multi-employer pension plan (MEPP), and the plan has active members employed in Ontario. Ontario's legislation, like that of many other jurisdictions, provides that in certain situations, a person will continue to qualify as a member of a MEPP even if the person is not currently employed and accruing benefits under the MEPP. In those circumstances, such an Ontario MEPP member would qualify as an active member of the MEPP for the purposes of the Agreement.*

**Text from Agreement:**

**SECTION 2  
APPLICATION**

**General application**

2. (1) Subject to subsection (2) and section 26, this Agreement applies to any pension plan that is/would, if this Agreement and any other agreement respecting the supervision of pension plans did not exist, be subject to registration with a pension supervisory authority under the pension legislation of more than one jurisdiction whose government is a party to this Agreement.

**Restriction**

- (2) This Agreement does not apply to a pension plan if the pension supervisory authority that would be designated as the major authority for the plan under this Agreement is not subject to this Agreement.

**Plan provision not effective**

- (3) This Agreement applies in respect of a pension plan despite any conflicting provision in any document that creates or supports the pension plan.

**Explanatory Notes:**

*This section establishes which pension plans are covered by the Agreement.*

**Examples:**

*The following are examples of when a pension plan would, or would not, be subject to the Agreement. Please note that the following examples do not set out all of the circumstances under which a plan would, or would not, be subject to the Agreement. For all of the examples below, assume that the pension plan would be subject to registration with the pension supervisory authority of each jurisdiction in the example, unless otherwise noted.*

*A pension plan **would** be subject to the Agreement under the following circumstances:*

- 1) Quebec and Ontario are both subject to the Agreement and the plan only has active members employed in Ontario, but also has retirees in Quebec.*
- 2) **Transition measures:** Ontario, Quebec and Alberta are subject to the Agreement and the plan's active membership is distributed as follows: 1000 employed in Ontario, 900 in Quebec, 800 in Alberta, 700 in Manitoba. The plan would be subject to the*



*Agreement in respect of Ontario, Quebec and Alberta, and would be subject to the existing Memorandum of Reciprocal Agreement in respect of Manitoba. In respect of Manitoba, the plan would be registered with the Financial Services Commission of Ontario ("FSCO") and administered under the existing Memorandum of Reciprocal Agreement.*

*A pension plan **would not** be subject to the Agreement under the following circumstances:*

- 3) All of the plan's active members and other beneficiaries (retirees, deferred vested members, etc.) have accrued all of their benefits as a result of employment in Quebec. This plan would not qualify as a multi-jurisdictional pension plan for the purposes of the Agreement.*
- 4) Ontario and British Columbia are subject to the Agreement. The plan is a "designated plan" for purposes of the federal Income Tax Act and has active members employed in Ontario and British Columbia. Ontario's legislation requires that designated plans be registered with FSCO, but British Columbia's legislation does not require that such plans be registered with its pension supervisory authority. The Agreement would not apply to this pension plan, as it would only have active members in one jurisdiction (i.e., Ontario) that requires the plan to be registered with its pension supervisory authority.*
- 5) **Transition measures:** Ontario, Quebec and Alberta are subject to the Agreement and the plan's active membership is distributed as follows: 900 employed in Ontario, 800 in Quebec, 700 in Alberta, 1000 in Manitoba. Manitoba's pension supervisory authority would be designated as the "major authority" for the plan under section 3 of the Agreement, but Manitoba is not subject to the Agreement. As such, the existing Memorandum of Reciprocal Agreement would instead continue to apply to all jurisdictions in relation to this plan.*

**PART II**  
**MAJOR AUTHORITY**

**Text from Agreement:**

**SECTION 3**  
**DETERMINATION OF THE MAJOR AUTHORITY**

**One major authority**

3. (1) One pension supervisory authority having jurisdiction over a pension plan shall be the major authority for the plan.

**Plurality of active members**

(2) Except as provided in sections 5 and 26, the major authority for a pension plan shall be the pension supervisory authority of the jurisdiction with the plurality of active members of the plan, as determined in accordance with subsection (3) and considering only those jurisdictions whose pension legislation would, if this Agreement and any other agreement respecting the supervision of pension plans did not exist, require the plan to be registered with the pension supervisory authority of that jurisdiction.

**Determination of plurality**

(3) The jurisdiction that, among those referred to in subsection (2), has the plurality of active members of a pension plan shall be determined using the most recent periodic information return that has been filed with a pension supervisory authority in relation to the plan's fiscal year end and on the following basis:

- (a) in respect of a provincial jurisdiction, the number of active members of the plan who are employed in that provincial jurisdiction and who would be subject to that jurisdiction's pension legislation if this Agreement and any other agreement respecting the supervision of pension plans did not exist; and
- (b) in respect of the federal jurisdiction, the number of active members of the plan who are employed in "included employment" within the meaning of that jurisdiction's pension legislation, where the plan is subject to that jurisdiction's pension legislation.

**Equal number of active members**

(4) Where the major authority for a pension plan cannot be determined by applying subsections (2) and (3) because two or more jurisdictions have authority over an equal number, greater than zero, of active members of the plan, the major authority

for the plan shall be, of those jurisdictions, the authority whose main office is in closest proximity to the main office of the administrator of the plan. For the purposes of this subsection:

- (a) the main office of a pension supervisory authority is the office from which the authority conducts most of its supervisory activities; and
- (b) the main office of the pension plan administrator is the office from which the plan administrator described in the text of the pension plan conducts most of the plan's administration.

**Status as major authority**

(5) A pension supervisory authority that becomes the major authority for a pension plan in accordance with this Agreement shall remain the major authority for the plan until the authority loses its status as major authority in accordance with this Agreement.

**Minor authorities**

(6) Once a pension supervisory authority becomes the major authority for a pension plan, any other pension supervisory authority to which this Agreement extends and that has supervisory or regulatory powers with respect to the plan becomes a minor authority for the plan.

**New pension plan registration**

(7) Where a pension supervisory authority receives an application to register a pension plan, that authority shall determine whether it is the major authority for the plan within the meaning of this Agreement, and if necessary and as soon as possible thereafter, that authority shall notify the plan administrator as to the relevant authority with which the plan should or may be registered and shall notify the relevant authority about the plan to be registered.

**Explanatory Notes:**

*This section establishes how the "major authority" for a multi-jurisdictional pension plan will be determined, based on the number of active plan members employed in each jurisdiction that has members in the plan. The plan must be registered with the major authority and any other pension supervisory authority with supervisory or regulatory powers respecting the plan will become a "minor authority" in relation to the plan.*

*Please refer to the Explanatory Notes and Examples for the definition of "active member" in section 1 of the Agreement above and note that there are circumstances where individuals will qualify as "active members" of a pension plan for the purposes of*

*the Agreement even though the individuals are not currently accruing benefits under the plan”.*

**Examples:**

*The following are examples of how the major authority would be determined for a multi-jurisdictional pension plan under different scenarios. Please note that the following examples do not set out all of the circumstances under which a major authority can be determined. For all of the examples below, assume that all jurisdictions are subject to the Agreement.*

- 1) A pension plan has 500 active members employed in Ontario, 450 in Quebec and 250 in British Columbia. The plurality of active members is in Ontario, so the plan would be registered in Ontario with the Financial Services Commission of Ontario (“FSCO”).*
- 2) A pension plan has 800 active members employed in British Columbia, 500 in Alberta, 300 in Manitoba and 800 in Ontario. British Columbia and Ontario have the same number of active members. The Financial Institutions Commission of British Columbia (“FICOM”) is located in Surrey, and FSCO is located in Toronto. The pension plan administrator is located in Calgary. The plan would be registered with FICOM because the office of the plan administrator, in Calgary, is closer to FICOM’s office in Surrey than to FSCO’s office in Toronto.*
- 3) A pension plan has 300 active members employed in Quebec and 450 in Ontario. The Ontario operations of the company are sold to a non-affiliated employer. While the new employer establishes a successor pension plan for the affected employees, the new employer does **not** assume responsibility for their past service liabilities and no assets are transferred out of the original plan. Under Ontario’s legislation in these circumstances, the Ontario members are deemed not to have terminated their membership in the original plan and therefore continue to be active members of the plan for the purposes of the Agreement. As a result, FSCO will continue to be the major authority for the plan.*
- 4) A pension plan is submitted to FICOM for registration. In reviewing the application for registration, there are 800 active members employed in British Columbia, 830 in Alberta and 700 in Saskatchewan. Since the plurality of active members is in Alberta, Alberta would be the major authority for the plan under the Agreement.*

*FICOM would advise the plan administrator that it is not the major authority for the plan and that the plan should be registered with the Office of the Alberta Superintendent of Pensions (the “Alberta Superintendent”). FICOM would also provide notice to the Alberta Superintendent.*

- 5) *A pension plan has 40 active members employed in Ontario, 10 active members in Alberta and 50 retirees whose former employment was in Quebec. Even though there are more inactive members in relation to Quebec than active members in Ontario, FSCO would be the major authority for the plan. This is because the terms of the Agreement require a plan to be registered in the jurisdiction with the most **active** members.*

**Text from Agreement:**

**SECTION 4**

**ROLE OF THE MAJOR AUTHORITY**

**Interpretation**

**4.** (1) For the purposes of this section:

- (a) a decision includes an order, direction, approval or, if specific recourse is provided, a proposal to make such a decision; and
- (b) recourse includes the right to request a hearing, review, reconsideration or appeal.

**Role of major authority**

(2) The major authority for a pension plan shall:

- (a) supervise and regulate the plan in accordance with this Agreement, and on behalf of each of the minor authorities for the plan as required by this Agreement;
- (b) subject to subsection (3) and section 9, exercise, with respect to the plan and as required by this Agreement, the functions and powers necessary to carry out this Agreement conferred on the minor authority by the pension legislation of the minor authority's jurisdiction;
- (c) apply and enforce any rules specified in this Agreement that are not part of the pension legislation of a jurisdiction; and
- (d) determine any matter or question related to the application of this Agreement to the plan in accordance with this Agreement and the procedural provisions of the pension legislation of the major authority's jurisdiction.

**Exceptions**

(3) Despite clause (b) of subsection (2):

- (a) where the major authority for a pension plan and a minor authority for the plan agree that a particular function or power conferred by the pension legislation of the minor authority's jurisdiction shall be exercised in respect of the plan by the minor authority, only such minor authority may exercise such function or power in respect of the plan;
- (b) where the major authority for a pension plan and a minor authority for the plan agree that a particular decision concerning the application of provisions

of the pension legislation of the minor authority's jurisdiction shall be made in respect of the plan by the minor authority, only such minor authority may make such decision in respect of the plan; and

- (c) where pension legislation confers on a pension supervisory authority the power to order or otherwise require the splitting of the assets and liabilities of a pension plan, only such authority may make a decision concerning the exercise of that power with respect to the liabilities of a plan that are subject to such pension legislation and the assets of the plan related to the funding of those liabilities.

#### **Decisions and recourse**

(4) Any decision that may be made by the major authority for a pension plan that applies the provisions of the pension legislation of a minor authority's jurisdiction as described in clause (b) of subsection (1) of section 6 is subject to the following rules:

- (a) the decision shall be made under the procedural provisions of the pension legislation of the major authority's jurisdiction that would have applied if the matter had arisen under that legislation;
- (b) the decision shall be deemed to have been made by the minor authority under the procedural provisions of the pension legislation of the minor authority's jurisdiction that would have applied if the minor authority had made the decision;
- (c) when the decision is issued by the major authority, it shall include notice to any person receiving the decision as to:
  - (i) the substantive provisions of the pension legislation of the minor authority's jurisdiction that were applied in formulating the decision that is made;
  - (ii) the recourse provided, if any, from the decision under the pension legislation of the minor authority's jurisdiction, including the body before whom such recourse may be exercised;
  - (iii) the time limit under the pension legislation of the minor authority's jurisdiction for exercising such recourse; and
  - (iv) where the pension legislation of the minor authority's jurisdiction does not provide for recourse from the decision, any recourse from the decision provided under any other legislation of that jurisdiction, including the body before whom such recourse may be exercised and the time limit for exercising such recourse; and

- (d) the right to recourse from the decision shall be determined under the pension legislation or other legislation of the minor authority's jurisdiction as though the decision had been made under the procedural provisions of that legislation.

**Continued role of major authority**

- (5) Exercise of a recourse from a decision referred to in this section does not have the effect of preventing or releasing the major authority from continuing to fulfill its responsibilities with respect to the pension plan as set out in subsection (2).

**Enforcement of decisions**

- (6) The major authority shall enforce any decision referred to in this section once that decision is no longer open to any further recourse, as well as any decision resulting from such recourse that is no longer open to any further recourse.

**Communication with major authority**

- (7) A person shall be entitled to communicate with the major authority for a pension plan in the same manner that the person would be entitled to communicate with a pension supervisory authority under the legislation that would apply to the person if this Agreement did not exist.

**Representative**

- (8) Where a person having any rights or benefits under a pension plan has designated another person or an association that represents people with rights or benefits under the plan to act on his or her behalf with respect to the major authority for the plan, such authority shall, to the extent permitted by law, communicate with that other person or association and, upon request, provide that other person or association with the information and documents to which the person is entitled.

**Explanatory Notes:**

*This section describes the role of the major authority for a multi-jurisdictional pension plan and the major authority's obligations under the Agreement, including obligations relating to decision-making and how recourse is taken from such decisions.*

*According to this section, the major authority is required to supervise and regulate the plan, and do so on behalf of each minor authority, as required by the Agreement. In order to carry out the latter function, the minor authority delegates certain powers and functions in respect of the plan to the major authority. However, the section also provides certain exceptions to this requirement with respect to particular functions, powers and decisions that may be exercised by the minor authority alone.*



*With respect to decision-making and recourse, this section requires that the major authority make all initial decisions on matters arising with respect to the pension plan (other than a decision that is to be made by a minor authority alone, as mentioned above), whether or not the matter is a matter described in Schedule B to the Agreement. All such initial decisions by the major authority are to be made in accordance with the procedural provisions of the pension legislation of the major authority's jurisdiction.*

*However, if the decision relates to a matter not described in Schedule B, any recourse from such a decision would be made in the minor authority's jurisdiction, in accordance with the procedural requirements of the legislation of that minor authority's jurisdiction, and the initial decision made by the major authority would be deemed to have been made by the minor authority in accordance with the procedural provisions of the legislation of the minor authority's jurisdiction.*

**Examples:**

- 1) *A pension plan is registered in Manitoba with the Pension Commission of Manitoba ("PCM"), but has active members employed in both Manitoba and Ontario. An Ontario member informs the PCM that he has not received his joint and survivor pension benefit in accordance with Ontario's pension legislation. The PCM attempts to resolve the issue through discussion with the parties involved, but compliance with Ontario's legislation is not achieved. As such, the Manitoba Superintendent of Pensions (the "Manitoba Superintendent") issues an order to the plan administrator, in accordance with the procedural requirements of Manitoba's legislation. The plan administrator wishes to pursue recourse. Since the issue relates to a matter not covered under Schedule B to the Agreement and the member is subject to Ontario's legislation in that regard, the recourse would be a hearing before the Financial Services Tribunal in Ontario. The recourse would be made in accordance with the procedures in Ontario's legislation and the initial order made by the Manitoba Superintendent would be deemed to have been made by the Ontario Superintendent of Financial Services by way of a notice of proposal, in accordance with the procedures in Ontario's legislation.*
- 2) *A pension plan is registered in Ontario with the Financial Services Commission of Ontario ("FSCO"), but has active members employed in both Ontario and Manitoba. A Manitoba member informs FSCO that he has not received his joint and survivor pension benefit in accordance with Manitoba's pension legislation. FSCO attempts to resolve the issue through discussion with the parties involved, but compliance with Manitoba's legislation is not achieved. As such, the Ontario Superintendent of Financial Services (the "Ontario Superintendent") issues a notice of proposal to make an order to the plan administrator, in accordance with the procedural requirements of Ontario's legislation. The plan administrator wishes to pursue recourse. Since the issue relates to a matter not covered under Schedule B of the Agreement and the member is subject to Manitoba's legislation in that regard, the recourse would be a*

*hearing before the PCM. The recourse would be made in accordance with the procedures in Manitoba's legislation and the initial notice of proposal issued by the Ontario Superintendent would be deemed to have been an order made by the Manitoba Superintendent, in accordance with the procedures in Manitoba's legislation.*

**Text from Agreement:**

**SECTION 5**

**LOSS OF MAJOR AUTHORITY STATUS**

**Loss of major authority status**

5. (1) The major authority for a pension plan shall lose its status in that regard on the date described in subsection (2) where, according to the most recent periodic information return that has been filed with the major authority in relation to the plan's fiscal year end, the number of active members of the plan employed in relation to the major authority's jurisdiction, as determined under subsection (3) of section 3 as of the plan's fiscal year end, is:
- (a) for the third consecutive fiscal year, less than the number of active members who were employed in relation to any other jurisdiction or jurisdictions;
  - (b) less than 75% of the number of active members who were employed in relation to any other jurisdiction; or
  - (c) equal to zero and there are active members of the plan employed in relation to any other jurisdiction.

**Date of loss of major authority status**

- (2) The major authority for a pension plan loses its status in that regard:
- (a) in the case provided for in clause (a) or (b) of subsection (1), five days prior to the end of the first plan fiscal year that begins after the date on which the major authority received the information referred to in the relevant clause; and
  - (b) in the case provided for in clause (c) of subsection (1), upon the later of the fifth day before the end of the current plan fiscal year during which the major authority received the information referred to in that clause or of the expiry of the period of six months beginning on the date the major authority received the information.

**New major authority**

- (3) When the major authority for a pension plan loses its status in that regard in accordance with subsection (2), the pension supervisory authority for the jurisdiction having, as determined in accordance with subsection (1), the plurality of active members of the plan becomes the plan's new major authority if that new major authority is subject to this Agreement.

**Equal number of active members**

(4) Where the new major authority for a pension plan cannot be determined in accordance with subsection (3) because two or more jurisdictions have authority over an equal number, greater than zero, of active members of the plan, the major authority for the plan shall be, of those jurisdictions, the authority whose main office is in closest proximity to the main office of the administrator of the plan. For the purposes of this subsection:

- (a) the main office of a pension supervisory authority is the office from which the authority conducts most of its supervisory activities; and
- (b) the main office of the pension plan administrator is the office from which the plan administrator described in the text of the pension plan conducts most of the plan's administration.

**Transitional rules**

(5) Where the major authority for a pension plan loses its status in that regard in accordance with this section:

- (a) all matters related to the plan that are pending before the major authority on the day preceding its loss of status as major authority shall be continued before that authority;
- (b) all matters related to the plan that concern a decision, order, direction or approval proposed or made by the major authority and pending before any administrative body or court on the day preceding the loss of the major authority's status as major authority shall be continued before such body or court;
- (c) for every matter in respect of which the major authority referred to in clause (a) or the administrative body or court referred to in clause (b) has proposed or made a decision, order, direction or approval to which the pension legislation or other legislation applying on the day preceding the replacement of the major authority provides a right of recourse:
  - (i) such right shall be maintained so long as the period provided for exercising that right has not expired; and
  - (ii) such recourse may be brought before the administrative body or court provided for by the legislation giving entitlement thereto;
- (d) for any matter related to the plan not described in clauses (a) to (c) that occurred while the major authority was the major authority for the plan and

that related to the provisions of the pension legislation of the major authority's jurisdiction in respect of a matter referred to in Schedule B:

- (i) the major authority may, even after it loses its status in that regard for the plan, conduct an examination, investigation or inquiry into the matter in accordance with the pension legislation of the major authority's jurisdiction to determine whether compliance with that legislation was met, and in such case, the matter shall remain subject to that major authority; and
  - (ii) where the matter constitutes an offence under the pension legislation of the major authority's jurisdiction, the offence may be prosecuted by the competent authority in that jurisdiction, and in such case, the matter shall remain subject to that major authority; and
- (e) all matters referred to in clauses (a) to (d) shall remain subject to the pension legislation or other legislation that, under this Agreement, applied to such matters on the day preceding the loss of the major authority's status as major authority.

**Notice by major authority**

(6) Where the major authority for a pension plan receives from the administrator of the plan the information described in clauses (a), (b) or (c) of subsection (1), it shall:

- (a) as soon as possible after receipt of the information, notify the pension plan administrator and each minor authority for the plan of the date on which, pursuant to subsection (2), it will lose its status as major authority for the plan and, if applicable, the pension supervisory authority that shall become the new major authority for the plan; and
- (b) as soon as possible after the plan's new major authority assumes its functions, provide to such new major authority all relevant records, documents or other information that it has concerning the plan.

**Notice by new major authority**

(7) The pension supervisory authority that replaces another authority as major authority for a pension plan shall, as soon as possible after assuming its functions, inform the pension plan administrator and each of the plan's minor authorities of the date on which it assumed the functions of major authority.

**Notice by plan administrator**

(8) The administrator of a pension plan that receives from the plan's major authority notice of the information provided for in clause (a) of subsection (6) or in subsection (7) shall:

- (a) in respect of the information provided for in clause (a) of subsection (6), transmit such information to each employer that is party to the plan and any collective bargaining agent that represents any person who has rights or benefits under the plan within 90 days after such notice; and
- (b) in respect of the information provided for in subsection (7), transmit such information to each employer that is party to the plan and any person who has rights or benefits under the plan who is entitled to receive an annual statement of the person's benefits, no later than the expiry of the period for providing such persons with their next annual statements of benefits.

**Explanatory Notes:**

*Over time, as the number of active members employed in different jurisdictions changes, the major authority for a multi-jurisdictional pension plan could change. This section sets out the criteria for determining the circumstances under which a major authority would lose its status in that regard under the Agreement. This section also establishes the timing of the loss of major authority status, the rules for determining a new major authority for the plan, as well as the notification requirements regarding a change in major authority.*

*At the time of transition from an initial major authority to a new major authority, all matters pending before the initial major authority will be continued by that authority. These matters could include, but are not limited to, matters where an application has been made to the initial major authority, or where that authority has commenced an enforcement action. Other matters which could be considered to be pending include matters with respect to which a member complaint has been received, information has been requested by the initial major authority or a demand for compliance has been made. Pre-existing routine matters, such as completion of the review of an actuarial report or an amendment, may also be continued by the initial major authority.*

**Examples:**

- 1) A defined benefit pension plan is registered in Ontario with the Financial Services Commission of Ontario (“FSCO”), has a plan fiscal year end of December 31 and must file an Annual Information Return (“AIR”) with FSCO by September 30 following the plan year end. The plan membership is as follows:

Year End	Active Members Employed by Jurisdiction		
	Ontario	Alberta	British Columbia
December 31, 2010	1000	800	500
December 31, 2011	800	500	1000
December 31, 2012	800	500	1000
December 31, 2013	800	1000	500

*The AIRs as of December 31 for 2011, 2012 and 2013 show that Ontario no longer has a plurality of active plan members. Once it is shown in the AIRs for three consecutive fiscal year ends that Ontario has less active members than any other jurisdiction, the role of the major authority will shift to the minor authority with the plurality of active members, determined at the end of the third fiscal year of the plan.*

*In this example, although for 2 of the 3 years British Columbia had more active members than either Ontario or Alberta, the major authority would shift to the Office of the Alberta Superintendent of Pensions (the “Alberta Superintendent”) because, at the end of the 3-year period, Alberta had the most members of any jurisdiction.*

*The December 31, 2013, AIR confirming the change in plurality would be received by FSCO by September 30, 2014. As soon as possible after receiving that AIR, FSCO would provide notice of the impending change of major authority (which will take place towards the end of 2015) to both the Alberta Superintendent and the British Columbia Financial Institutions Commission (“FICOM”). The pension plan administrator would also receive notice from FSCO of the impending change in registration and major authority.*

*The plan administrator would then notify all employers participating in the plan and any collective bargaining unit representing anyone with rights or benefits under the plan of the impending change of major authority, within 90 days of receiving FSCO’s notice.*

*The AIR for the plan fiscal year ending December 31, 2014, would still be filed with FSCO in accordance with Ontario’s legislation, and the change of major authority to the Alberta Superintendent would occur on December 26, 2015 (even if the AIR for the December 31, 2014, plan year end shows a further change in active plan membership). This means that the AIR for the plan fiscal year ending December 31, 2015, would be filed with the Alberta Superintendent.*

*As soon as possible after the Alberta Superintendent assumes the role of major authority for the plan, it would provide notice to the minor authorities (FSCO and FICOM) and the plan administrator that it is the new major authority for the plan.*

*In turn, the plan administrator would be required to provide notice of the change in major authority to any person entitled to receive an annual statement of benefits from the plan and to all employers that are party to the plan, by the time that the next annual statements of benefits are required to be provided.*

- 2) *A pension plan has the same characteristics as the plan in example 1, other than the following plan membership characteristics:*

Year End	Active Members Employed by Jurisdiction		
	Ontario	Quebec	Alberta
December 31, 2010	1000	800	500
December 31, 2011	700	1000	500

*The December 31, 2010, AIR shows 1000 active members employed in Ontario compared to 800 in Quebec. However, as of December 31, 2011, there are only 700 active members employed in Ontario and 1000 in Quebec. Since the number of active members in Ontario is now less than 75% of the active members in Quebec, the registration of the plan will now move to the Régie des rentes du Québec ("Régie").*

*The December 31, 2011, AIR would be received by FSCO by September 30, 2012. As soon as possible after receiving that AIR, FSCO would notify the plan administrator and the two minor authorities (the Régie and the Alberta Superintendent) of the impending change of major authority (which will take place towards the end of 2013). The plan administrator would then be required to provide this information to all participating employers, and any collective bargaining unit representing anyone with rights or benefits under the plan, within 90 days of receiving FSCO's notice.*

*The AIR for the plan fiscal year ending December 31, 2012, would still be filed with FSCO in accordance with Ontario's legislation and the change of major authority to the Régie would occur on December 26, 2013 (even if the AIR for the December 31, 2012, plan year end shows a further change in active plan membership). This means that an AIR for the plan fiscal year ending December 31, 2013, would be filed with the Régie in accordance with Quebec's legislation.*

*As soon as possible after the Régie assumes its role as major authority for the plan, it would provide notice to the plan administrator and the minor authorities (FSCO and the Alberta Superintendent) that it is the new major authority for the plan. In turn,*



*the plan administrator would be required to provide this information to any person entitled to receive an annual statement of benefits from the plan and all employers that are party to the plan, by the time that the next annual statements of benefits are required to be provided.*

- 3) *A pension plan has the same characteristics as the plan in example 1, other than the following plan membership characteristics:*

Year End	Active Members Employed by Jurisdiction		
	Ontario	Manitoba	British Columbia
December 31, 2010	1000	800	500
December 31, 2011	0	800	500

*The December 31, 2010, AIR shows 1000 active members employed in Ontario compared to 800 in Manitoba. However, as of December 31, 2011, there are no active members left in Ontario. As such, the registration of the plan will now move to the Manitoba Pension Commission.*

*The December 31, 2011, AIR would be received by FSCO by September 30, 2012. As soon as possible after receiving that AIR, FSCO would notify the plan administrator and the two minor authorities (the Manitoba Pension Commission and FICOM) of the impending change of major authority (which in this example will take place in 2013). The plan administrator would then be required to provide this information to all employers participating in the plan, as well as any collective bargaining agent that represents anyone with rights or benefits under the plan, within 90 days of receiving FSCO's notice.*

*Assuming the December 31, 2011, AIR was received by FSCO on September 30, 2012, the Manitoba Pension Commission would become the major authority for the plan effective April 1, 2013. The AIR for the plan fiscal year ending December 31, 2012, would still be filed with FSCO in accordance with Ontario's legislation, but all subsequent AIRs would be filed with the Manitoba Pension Commission in accordance with Manitoba's legislation.*

*As soon as possible after the Manitoba Pension Commission assumes the role of major authority for the plan, it would provide notice to the plan administrator and the minor authorities (FICOM, and if there are still any Ontario liabilities in relation to the plan, FSCO) that it is the new major authority for the plan. In turn, the plan administrator would be required to provide this information to any person entitled to receive an annual statement of benefits from the plan and all employers that are party to the plan, by the time that the next annual statements of benefits are required to be provided.*

- 4) *British Columbia and Manitoba are both subject to the Agreement, but New Brunswick is not. A pension plan has active members employed in British Columbia, Manitoba and New Brunswick and FICOM is the major authority for the plan under the Agreement. If the plurality of active plan membership changes to New Brunswick, then the plan's registration would be transferred to the New Brunswick Office of the Superintendent of Pensions and the plan would be completely subject to the existing Memorandum of Reciprocal Agreement instead of this Agreement.*
- 5) *All jurisdictions are party to the Agreement. A pension plan has the Alberta Superintendent as its major authority and has, in each of three consecutive fiscal years, 800 members employed in both British Columbia and Ontario, 500 in Alberta and 300 in Manitoba. The location of the plan administrator is in Calgary. FICOM will become the new major authority for the plan, since its offices in Surrey are located within closest proximity to the plan administrator.*
- 6) *All jurisdictions are party to the Agreement. FICOM is the major authority for a pension plan, but the plurality of active membership shifts to the province of Quebec and the Régie will become the plan's new major authority. Before the change of major authority, the British Columbia Superintendent of Pensions issues a direction for compliance against the plan administrator.*

*The change of major authority will occur as scheduled, but the regulatory matter pending before FICOM will continue to be addressed by FICOM until the point at which it is no longer open to recourse. Once it is no longer open to recourse, the Régie would be required to implement any final resolution of the matter.*

- 7) *A pension plan has the same characteristics as the plan in example 1, including the following plan membership characteristics:*

Year End	Active Members Employed by Jurisdiction		
	Ontario	Alberta	British Columbia
December 31, 2010	1000	800	500
December 31, 2011	800	500	1000
December 31, 2012	800	500	1000
December 31, 2013	800	1000	500

*As described in example 1, the change in major authority would occur on December 26, 2015, and the AIR for the period ending December 31, 2015, would be filed with the Alberta Superintendent.*

*Assume that, prior to December 26, 2015, FSCO issues a notice of proposal to make an order against the administrator of this pension plan. The plan administrator then requests a hearing before the Financial Services Tribunal ("FST") of Ontario, as*

*permitted by Ontario's legislation. As of December 26, 2015, the matter is still pending before Ontario's FST.*

*Because this regulatory action was started before December 26, 2015, the matter would be continued before the FST until resolved (that is, until the FST's decision has been issued, and either the time frame for an appeal of the FST's decision has expired or all avenues of appeal have been exhausted).*

**PART III**  
**APPLICABLE LAW**

**Text from Agreement:**

**SECTION 6**  
**APPLICABLE LEGISLATION**

**Applicable pension legislation**

6. (1) While a pension supervisory authority is the major authority for a pension plan in accordance with this Agreement:

- (a) the provisions of the pension legislation of the major authority's jurisdiction in respect of matters referred to in Schedule B apply to the plan instead of those of the corresponding provisions of the pension legislation of any minor authority's jurisdiction that would apply to the plan if this Agreement did not exist; and
- (b) subject to the provisions of this Agreement, the provisions of the pension legislation of each jurisdiction that are applicable to the plan under the terms of such legislation apply to the plan in respect of matters not referred to in Schedule B.

**Funding rule exceptions**

(2) Despite clause (a) of subsection (1):

- (a) where the pension legislation of a minor authority's jurisdiction would, if this Agreement did not exist, require the funding of a benefit provided with respect to persons having rights under a pension plan who are subject to that legislation:
  - (i) funding shall be made in respect of that benefit with respect to those persons, even if funding for that benefit would not be required under the pension legislation of the major authority's jurisdiction; and
  - (ii) funding of the benefit described in subclause (i) shall be made in a manner consistent with the funding of other benefits that are required to be funded under the pension legislation of the major authority's jurisdiction;

- (b) where the pension legislation of a minor authority's jurisdiction requires, for the purposes of this clause, that an additional liability be established and funded on a solvency basis with respect to persons having rights under a pension plan who are subject to that legislation:
  - (i) such liability shall be established and funded, even if such liability would not be required to be established, and such funding would not be required, under the pension legislation of the major authority's jurisdiction; and
  - (ii) funding of the liability described in subclause (i) shall be made in a manner consistent with the funding of benefits that are required to be funded under the pension legislation of the major authority's jurisdiction; and
- (c) subject to subsection (4), when a pension supervisory authority becomes the major authority for a pension plan in accordance with this Agreement, if the funding of any benefit provided under the plan has been based on actuarial valuation reports filed in respect of the plan with a pension supervisory authority, the funding of those benefits shall continue to be subject to the pension legislation that applied immediately before the major authority assumed its functions in respect of the plan until such time as a new actuarial valuation report is due to be filed in respect of the plan with the major authority in accordance with the pension legislation of the major authority's jurisdiction.

### **Definitions**

(3) For the purposes of subsection (4):

“alternative funding arrangement” means a fund or financial instrument that is described in the pension legislation of a jurisdiction and is permitted under that legislation to supplement, support or otherwise satisfy the funding requirements for a pension plan under that legislation, where in the absence of such fund or financial instrument additional contributions would be required to be made to the pension fund of the plan in order to satisfy the funding requirements for the plan under that legislation; (« instrument financier »)

“new major authority” means a pension supervisory authority that becomes the major authority for a pension plan in accordance with this Agreement; and

“prior authority” means a pension supervisory authority with which a pension plan is registered immediately before a pension supervisory authority becomes the major authority for the plan in accordance with this Agreement.

**Alternative funding arrangement exceptions**

(4) Despite clause (a) of subsection (1), when a pension supervisory authority becomes the new major authority for a pension plan, if the pension legislation of the prior authority's jurisdiction permitted the use of an alternate funding arrangement, but the pension legislation of the new major authority's jurisdiction does not permit the use of that alternate funding arrangement, then:

- (a) if, no later than thirty-five days before the new major authority becomes the major authority for the plan, the administrator of the plan provides notice to both the new major authority and the prior authority that it intends to file an actuarial valuation report with the new major authority with a valuation date that coincides with the fiscal year end of the plan that immediately follows the new major authority becoming the major authority for the plan, then the following rules shall apply with respect to the funding of the plan:
  - (i) the alternative funding arrangement may continue to be used until thirty days after the valuation report is due to be filed with the new major authority;
  - (ii) no later than thirty days after the valuation report is due to be filed with the new major authority, an amount equal to the lesser of the value of the alternative funding arrangement or the amount required to make the plan fully funded on a solvency basis shall be deposited into the pension fund of the plan by an employer that is party to the plan; and
  - (iii) if the amount described in subclause (ii) has not been deposited by an employer into the pension fund of the plan within the thirty day timeframe described in that subclause, an amount equal to the full value of the alternative funding arrangement shall be immediately deposited into the pension fund of the plan by an employer that is party to the plan; and
- (b) if the administrator of the plan does not provide the notice described in clause (a), then the following rules shall apply with respect to the funding of the plan:
  - (i) no later than thirty days before the new major authority becomes the major authority for the plan, an amount equal to the lesser of the value of the alternative funding arrangement or the amount required to make the plan fully funded on a solvency basis shall be deposited into the pension fund of the plan by an employer that is party to the plan; and

- (ii) until the time a new actuarial valuation report described in clause (c) of subsection (2) is filed with the new major authority respecting the plan, an amount equal to the lesser of the value of any subsequent alternative funding arrangement that would have been required to have been obtained in relation to the plan under the pension legislation of the prior authority's jurisdiction, or the amount that would be required to make the plan fully funded on a solvency basis, shall be deposited into the pension fund of the plan by an employer that is party to the plan instead of obtaining the subsequent alternative funding arrangement, at or before the time the alternative funding arrangement would have been required to have been obtained in relation to the plan under the pension legislation of the prior authority's jurisdiction and in accordance with the last actuarial valuation report that had been filed with the prior authority in respect of the plan.

**Explanatory Notes:**

*This section describes the matters to which the pension legislation of the major authority's jurisdiction would apply in respect of a multi-jurisdictional pension plan registered with that authority, and the matters to which the pension legislation of a minor authority's jurisdiction would apply in respect of the plan.*

*The pension legislation of the major authority's jurisdiction would apply to such a plan instead of the corresponding provisions of the pension legislation of any minor authority's jurisdiction in respect of matters referred to in Schedule B to the Agreement.*

*On the other hand, the pension legislation of a minor authority's jurisdiction will continue to apply to the plan with respect to all matters that are not referred to in Schedule B, including requirements respecting the benefits accrued by plan members who are subject to that legislation.*

*Generally speaking, matters related to the funding of an ongoing pension plan are included in Schedule B to the Agreement and subject to the pension legislation of the major authority's jurisdiction. However, subsection 6(2) of the Agreement sets out a number of exceptions to this general approach.*

*Clause 6(2)(a) of the Agreement provides that, in instances where the pension legislation of a minor authority's jurisdiction requires that a specific benefit be funded, that benefit would be required to be funded, even if the legislation of the major authority's jurisdiction does not require funding for that benefit. The general manner in which such a benefit would be funded (for example, how the benefit liability would be accounted for in an actuarial valuation report, the deadline for making contributions in relation to the*

*benefit liability, etc.) would be subject to the funding rules in the legislation of the major authority's jurisdiction.*

*Clause 6(2)(b) of the Agreement acknowledges that the legislation of a minor authority's jurisdiction may provide additional funding protection to pension plan members employed in that jurisdiction through the creation of a special "additional liability". As such, this section requires that where the legislation of a minor authority's jurisdiction requires an additional liability to be established in relation to plan members subject to that legislation, such additional liability must be funded in relation to those members, even if the legislation of the major authority's jurisdiction would not require such funding.*

*Clause 6(2)(c) of the Agreement sets out a plan funding transition rule for situations where a pension supervisory authority becomes the major authority for a defined benefit pension plan under the Agreement. This transition rule would apply both where the registration of a defined benefit plan moves from an authority that is not subject to the Agreement to an authority that is subject to the Agreement, and where a change of major authority occurs between authorities that are both already subject to the Agreement.*

*Clause 6(2)(c) provides that where a pension supervisory authority becomes the major authority for a defined benefit plan in these circumstances, the funding rules in the legislation of the prior authority's jurisdiction will continue to apply with respect to the funding of benefits under the plan until a new actuarial funding valuation report is due to be filed for the plan with the new major authority as required by the legislation of the new major authority's jurisdiction. On and after the due date for filing that new valuation report with the new major authority, the funding rules in the legislation of the new major authority's jurisdiction will apply to the plan and that new valuation report.*

*Subsection 6(4) of the Agreement also set out additional plan funding transition rules for "alternative funding arrangements" as defined in subsection 6(3). Currently, letters of credit as permitted under the pension legislation of Alberta, British Columbia, Quebec and the federal jurisdiction are the only type of alternative funding arrangement that exist for the purposes of the Agreement, although the definition in the Agreement is broad enough to encompass other arrangements that may be permitted by pension legislation in future.*

*Subsection 6(4) applies where a pension supervisory authority will become the major authority for a pension plan under the Agreement and the legislation of that new major authority's jurisdiction does not permit the use of an alternative funding arrangement that the plan is currently using as permitted by the legislation of the jurisdiction under which the plan is currently registered. Subsection 6(4) would apply both where the registration of the plan moves from an authority that is not subject to the Agreement to*



*an authority that is subject to the Agreement, and where a change of major authority occurs between authorities that are both already subject to the Agreement.*

*In the situation described in subsection 6(4), the administrator of the plan may elect one of two options. In essence, the first option (described in clause 6(4)(a) of the Agreement) allows the plan to continue using the alternative funding arrangement, even after the new major authority has assumed its duties with respect to the plan, until an actuarial valuation report is due to be filed with the new major authority, at which point the employer is required to deposit into the plan's pension fund the value of the alternative funding arrangement or the amount needed to make the plan fully funded on a solvency basis, whichever is less. The other option (described in clause 6(4)(b) of the Agreement) is for the employer to deposit into the plan's pension fund the value of the alternative funding arrangement or the amount needed to make the plan fully funded on a solvency basis, whichever is less, before the new major authority assumes its duties.*

*Note that nothing in the Agreement would prevent the terms of the alternative funding arrangement from being amended to comply with the pension legislation of the new major authority's jurisdiction, if so permitted by the pension legislation that applies to the alternative funding arrangement before the new major authority assumes its duties with respect to the pension plan.*

**Examples:**

- 1) *The Nova Scotia Office of the Superintendent of Pensions is the major authority for a pension plan that has members in Nova Scotia and Ontario. Ontario's pension legislation provides for legislated "grow-in" benefits and requires the funding of those benefits. Nova Scotia's pension legislation also provides for legislated grow-in benefits but does not require the funding of those benefits. The Nova Scotia Office of the Superintendent of Pensions must require that grow-in benefits be funded for the Ontario members of this plan, although the general manner in which the Ontario grow-in benefits would be funded would be subject to the funding rules in Nova Scotia's pension legislation.*
- 2) *The Financial Services Commission of Ontario ("FSCO") is the major authority for a pension plan that has members in Ontario and Quebec. Quebec's pension legislation requires the funding of post-retirement indexation benefits. Ontario's pension legislation does not require the funding of post-retirement indexation benefits. FSCO must require that post-retirement indexation benefits be funded for the Quebec members of this plan, although the general manner in which the post-retirement indexation benefits would be funded would be subject to the funding rules in Ontario's pension legislation.*

- 3) *FSCO is the major authority for a pension plan that has members in Ontario and Quebec. Ontario's pension legislation requires that unisex mortality tables be used to determine how benefits are funded, but Quebec's pension legislation requires that gender-specific mortality tables be used to determine funding. FSCO will require that all benefits be funded for Quebec plan members using the unisex mortality tables, in accordance with Ontario's legislation. However, when Quebec plan members terminate their membership, the commuted value of their accrued benefits would be determined using gender-specific mortality tables, in accordance with Quebec's legislation.*
  
- 4) *The Office of the Alberta Superintendent of Pensions (the "Alberta Superintendent") is the major authority for a defined benefit pension plan that has members in Alberta and Ontario. The last filed actuarial funding valuation report for the plan was submitted to the Alberta Superintendent on June 29, 2011, and had an effective date of December 31, 2010.*

*As a result of a shift in the plurality of the plan's membership, FSCO becomes the new major authority for the plan on December 26, 2012. The next required valuation report for the plan will have an effective date of December 31, 2013, and will not be required to be filed with FSCO under Ontario's pension legislation until September 30, 2014. As such, this plan will continue to be subject to funding rules in Alberta's pension legislation until September 30, 2014, at which point it will be subject to the funding rules in Ontario's pension legislation.*

- 5) *The Régie des rentes du Québec ("Régie") is the major authority for a defined benefit pension plan that has members in Quebec and in Ontario. The plan's funding is supported by a letter of credit arrangement in the amount of \$700,000 in accordance with Quebec's pension legislation. As a result of a shift in the plurality of the plan's membership, FSCO will become the new major authority for the plan on December 26, 2013. Ontario's pension legislation does not allow for the use of letter of credit arrangements.*

*On or before November 21, 2013, the plan administrator notifies both the Régie and FSCO that it intends to file with FSCO a new actuarial funding valuation report for the plan with an effective date of December 31, 2013 (the next fiscal year end of the plan). Ontario's pension legislation will require that the valuation report be filed with FSCO no later than September 30, 2014.*

*No later than October 30, 2014, the employer must pay into the plan's pension fund a cash amount equal to the lesser of the full value of the letter of credit arrangement (\$700,000) or the amount needed to make the plan fully funded on a solvency basis.*

*If the employer fails to pay that amount into the pension fund by October 30, 2014, the employer must pay the full value of the letter of credit arrangement into the pension fund without further delay.*

- 6) *A pension plan has the same characteristics as the plan described in example 5, but the plan administrator does not notify the Régie and FSCO by November 21, 2013, that it intends to file with FSCO a new actuarial funding valuation report for the plan with an effective date of December 31, 2013.*

*No later than November 26, 2013, the employer must pay into the plan's pension fund a cash amount equal to the lesser of the full value of the letter of credit arrangement (\$700,000) or the amount needed to make the plan fully funded on a solvency basis.*

*In addition, if Quebec's legislation would have required that the plan obtain additional letters of credit in the future to support the plan's funding, until a new valuation report for the plan is filed with FSCO, the employer will be required to pay into the plan's pension fund a cash amount equal to the lesser of the full value of each future letter of credit or the amount needed to make the plan fully funded on a solvency basis on the dates that each future letter of credit would have been required to be obtained under Quebec's legislation.*

- 7) *The Office of the Alberta Superintendent of Pensions (the "Alberta Superintendent") is the major authority for a defined benefit pension plan that has members in Alberta and Quebec. The last filed actuarial funding valuation report for the plan had an effective date of December 31, 2012, and determined a solvency deficiency for the plan that must be funded by special payments from the employer over 5 years. As permitted under Alberta's pension legislation, the employer obtains letters of credit covering all of the required special payments over the 5 years related to that solvency deficiency for the entire 5 year period.*

*As a result of a shift in the plurality of the plan's membership, the Régie will become the new major authority for the plan on December 26, 2014. While Quebec's pension legislation allows for the use of letters of credit, its rules governing letters of credit are slightly different from those in Alberta's pension legislation, and the letters of credit held in relation to this plan would not satisfy Quebec's requirements. The plan administrator also does not intend to file a notice in accordance with section 6(4)(a) of the Agreement respecting the filing of a new valuation report for the plan. As a result, by November 26, 2014, the employer would be required to pay into the plan either the value of all of the plan's letters of credit or the amount required to fully fund the plan on a solvency basis, whichever is less.*

*In such a situation, the employer and plan administrator may wish to reduce the value of letters of credit held before November 26, 2014, in relation to the plan to cover only the special payments related to the 2013 and 2014 plan fiscal years. Such a reduction in the value of letters of credit held in relation to the plan could be made, as long as the requirements for letters of credit in Alberta's pension legislation allowed for the reduction and the reduction occurred before November 26, 2014.*

- 8) *The Financial Institutions Commission of British Columbia ("FICOM") is the major authority for a pension plan that has members in British Columbia and Quebec. The last filed actuarial funding valuation report for the plan had an effective date of December 31, 2013, and determined a solvency deficiency for the plan that would usually be funded by special payments from the employer over 5 years. However, British Columbia's pension legislation provides for a temporary moratorium on such special payments, and during the 2014 and 2015 plan fiscal years, no special payments relating to the solvency deficiency are paid into the plan's pension fund, and the plan is not fully funded on a solvency basis on December 31, 2015.*

*As a result of a shift in the plurality of the plan's membership, the Régie will become the new major authority for the pension plan on December 26, 2015. Using the authority granted to it under Quebec's legislation, the Régie requires that the plan administrator complete a new valuation report for the plan with an effective date of December 31, 2015, and requires that the new report be filed with the Régie by September 30, 2016. Quebec's pension legislation does not provide for a moratorium on special payments for solvency deficits and as a result, the solvency deficiency determined in relation to the plan as at December 31, 2015, will have to be funded by the employer in accordance with Quebec's legislation.*

**Text from Agreement:**

**SECTION 7**

**DETERMINATION OF BENEFITS BY FINAL LOCATION**

**Deemed applicability of pension legislation**

7. For the purposes of determining the benefits accrued by a person under a pension plan, the person's entire benefit accrual shall be deemed to have been subject to the pension legislation that applied to the person:
- (a) at the time the person's benefits were determined, if the person was still accruing benefits under the plan at that time; or
  - (b) at the time the person ceased accruing benefits under the plan, if the person was no longer accruing benefits under the plan at the time the person's benefits were determined.

**Explanatory Notes:**

*A member of a multi-jurisdictional pension plan may be employed in more than one jurisdiction over the course of his or her employment. This section requires that a "final location" methodology be used in determining the member's overall benefit entitlement.*

*The adoption of the final location methodology does not require a retroactive redetermination of a pension plan member's contributions to the plan or a retroactive recalculation of the interest applicable to those contributions. The interest calculated on member contributions in a given year will depend on the rules in the pension legislation of the jurisdiction to which the member was subject in that year.*

*Despite the adoption of the final location method for determining benefits, plan administrators are expected to keep a record of members' employment and benefit accrual in Ontario to determine eligibility for the Pension Benefits Guarantee Fund established under Ontario's legislation. Please also refer to section 9 of the Agreement.*

**Examples:**

- 1) *A pension plan member is employed for 5 years in Nova Scotia, transfers to Ontario for 10 years, then to British Columbia. While employed in British Columbia, the member's pension plan is split and the member's accrued benefits must be determined for the purposes of the plan split. In determining the member's benefit entitlement as of the date of the split, the member's benefits are deemed to have all been accrued throughout his or her period of plan membership in accordance with British Columbia's pension legislation.*

- 2) *A pension plan member is employed for 5 years in British Columbia, transfers to Ontario for 10 years, then to Quebec. After 5 years of employment in Quebec, the member terminates employment. In determining the member's benefit entitlement as of the date of termination, the member's benefits are deemed to have all been accrued throughout his or her period of plan membership in accordance with Quebec's pension legislation. While most pension legislation in Canada requires that unisex mortality tables be used to determine the commuted value of benefits under a pension plan, Quebec's legislation requires the use of gender-specific mortality tables. Consequently, the commuted value of this person's accrued benefits would be determined using gender-specific mortality tables in accordance with Quebec's legislation.*
  
- 3) *A pension plan member is employed for 5 years in Alberta, and transfers to Saskatchewan for another 10 years. The person then terminates employment and membership in the plan, and takes a job with a different employer in Ontario. The person elects to leave his or her accrued benefit entitlement in the first employer's plan. At a future date, the person elects to transfer the commuted value of the accrued benefits to a locked-in vehicle. In determining the person's benefit entitlement as of the date of transfer to the locked-in vehicle, the person's benefits are deemed to have all been accrued throughout his or her period of plan membership in accordance with Saskatchewan's pension legislation. Saskatchewan's pension legislation will also apply to the locked-in vehicle obtained by the person.*

**Text from Agreement:****SECTION 8  
PENSION PLAN INVESTMENTS****Deadline for compliance**

**8.** Despite any other provision of this Agreement, any investment by a pension plan that is held on the date a pension supervisory authority becomes the major authority for the plan and that, although it complies with the pension legislation that applied to the plan on the day preceding that date, does not comply with the pension legislation that applies to the plan's investments from that date, shall be brought into compliance with the latter legislation within five years from that date.

**Explanatory Notes:**

*This section will apply to a multi-jurisdictional pension plan when the registration of the plan moves between jurisdictions with differing pension fund investment rules. The Agreement specifies a five-year transition period, from the effective date that a pension supervisory authority becomes the major authority for the plan under the Agreement, for the plan to bring its existing investments into compliance with the investment rules of that major authority. All new investments made after the date that the major authority assumes its duties in that regard must be fully compliant with the pension fund investment rules in the major authority's jurisdiction. This transition period would apply both where the registration of a plan moves from an authority that is not subject to the Agreement to an authority that is subject to the Agreement, and where a change of major authority occurs between authorities that are both already subject to the Agreement*

**Example:**

*The Financial Services Commission of Ontario replaces the Régie des rentes du Québec as the major authority for a pension plan effective December 26, 2011. The plan in question would have until December 26, 2016, to bring its existing pension fund investments into compliance with the investment rules for pension plans under Ontario's pension legislation. All new pension fund investments made after December 26, 2011, must be fully compliant with Ontario's pension legislation.*

**Text from Agreement:**

**SECTION 9**

**PENSION BENEFITS GUARANTEE FUND**

**Pension benefits guarantee fund**

9. Subject to sections 10 to 17, this Agreement shall not affect the application or administration of the Pension Benefits Guarantee Fund set out under the pension legislation of Ontario or any similar fund established under any other pension legislation.

**Explanatory Notes:**

*Ontario Pension Benefits Guarantee Fund assessments and claims would not be affected by the Agreement.*



**PART IV**  
**PENSION PLAN ASSET ALLOCATION BETWEEN JURISDICTIONS**

**Text from Agreement:**

**SECTION 10**  
**APPLICABLE SITUATIONS**

**Applicable situations**

**10.** The assets of a pension plan shall be allocated into portions in accordance with this Part when:

- (a) the plan is amended so that part of the liability of the plan to pay benefits or other amounts to persons so entitled under the plan is transferred to a different pension plan, and where, as part and in consideration of that transfer of liability, part of the assets of the plan are transferred to the different plan;
- (b) a pension supervisory authority orders or otherwise requires the splitting of the assets and liabilities of the plan, as described in clause (c) of subsection (3) of section 4;
- (c) the plan has more than one participating employer and an employer withdraws from the plan, and pension legislation requires that the rights and benefits accrued under the plan be divided into groups, one of which consists of the rights and benefits of persons affected by the withdrawal, and that those persons may elect to have their rights and benefits under the plan be paid forthwith;
- (d) the plan is being wound up in part;
- (e) the plan is being fully wound up; or
- (f) a situation not described in clauses (a) to (e) occurs and assets of the plan related to a jurisdiction are to be paid to an employer that participates in the plan in accordance with the pension legislation of that jurisdiction.

**Explanatory Notes:**

*Since the assets of a multi-jurisdictional pension plan are not typically differentiated by jurisdiction through separate accounting, the Agreement defines rules that specify a*

*methodology for the allocation of assets among jurisdictions upon the occurrence of six different situations:*

- 1) Split of a pension plan – This occurs when a portion of the assets and liabilities of an existing plan are transferred to another pension plan. This is referred to as a “pension plan asset transfer” in the pension legislation of most jurisdictions. The pension plan to which the assets and liabilities are being transferred could either be a new plan or an existing plan. A transfer of assets and liabilities does not affect the benefits or amounts to which members are entitled under the plan, nor does it affect the rights of members under the plan;*
- 2) Split of a pension plan ordered by a pension supervisory authority;*
- 3) Withdrawal of an employer from a plan that has more than one participating employer – Currently, this concept only exists under Quebec’s pension legislation. Quebec’s pension legislation was amended at the end of 2000 to eliminate the concept of a partial plan wind up, with the exception of circumstances where there is a “withdrawal of an employer from a multi-employer pension plan”;*
- 4) Partial pension plan wind up – The pension legislation in a number of Canadian jurisdictions provides for the partial wind up of a pension plan. For multi-jurisdictional pension plans that are subject to the Agreement, where the pension legislation of a jurisdiction provides for a partial wind up of the plan, that legislation will govern the partial wind up of the plan in respect of members from that jurisdiction;*
- 5) Full pension plan wind up – The pension legislation for a number of Canadian jurisdictions distinguishes between the “termination” of a pension plan (meaning the cessation of crediting benefits to plan members under the plan) and the “winding up” of a plan (meaning the distribution of the assets of a pension plan that has been terminated). For example, British Columbia’s pension legislation specifically distinguishes and defines the two terms. In such jurisdictions, the winding up of a pension plan may not occur until some time after the plan is terminated. It is important to note that a full pension plan wind up for the purposes of the Agreement involves the distribution of all of the assets of the pension plan;*
- 6) Withdrawal of plan assets by an employer as permitted by the pension legislation in various jurisdictions and under circumstances other than those described above.*

**Text from Agreement:**

**SECTION 11**

**ALLOCATION OF ASSETS**

**Allocation into portions**

**11.** (1) For the purposes of this Part, the assets of a pension plan shall be allocated into portions as of the date of allocation, each portion being related to the liability for benefits and other amounts accrued under the plan, and any additional liability referred to in clause (b) of subsection (2) of section 6 respecting the plan, that is subject to a jurisdiction's pension legislation, as determined in accordance with this section.

**Standard allocation methodology**

(2) Subject to section 12, the portion of a pension plan's assets that is subject to a jurisdiction's pension legislation as of the date of allocation shall be equal to the sum of the amounts referred to in section 13 as of the date of allocation, determined with respect to the benefits and other amounts described in section 13 that are subject to that jurisdiction's pension legislation and applying the requirements of sections 14 to 16.

**Other allocation methodology**

(3) The major authority for a pension plan may permit the assets of the plan to be allocated into the portions described in subsection (1) in a manner other than that required by subsection (2) or section 12 if:

- (a) the allocation of the plan's assets is made in relation to any situation described in section 10 other than the full wind up of the plan and a Fellow of the Canadian Institute of Actuaries certifies that:
  - (i) the liabilities of the plan that are related to the plan assets to be allocated into the portions described in subsection (2) do not exceed those assets on either a solvency basis or a going concern basis; and
  - (ii) the allocation of the assets of the plan described in subclause (i) will not differ materially from an allocation of those assets conducted in accordance with subsection (2); or
- (b) the allocation of the plan's assets is made in relation to a situation described in clause (d) of section 10, no pension legislation that applies to the plan assets to be allocated into the portions described in subsection (2) requires the distribution of any plan assets related to the wound up part of the plan that remain after all liabilities related to the wound up part of the plan have been settled and a Fellow of the Canadian Institute of Actuaries certifies that the liabilities of the plan related to the wound up part of the plan do not

exceed the plan assets related to the wound up part of the plan on either a solvency basis or a going concern basis immediately before the partial wind up of the plan.

**Explanatory Notes:**

*This section establishes a standard methodology for allocating the assets of a pension plan between jurisdictions, as well as optional methodologies that could be used when certain conditions are met.*

*Under either the standard or optional methodologies, the assets of a multi-jurisdictional pension plan are to be allocated into portions, with each portion representing the plan assets allocated to a particular jurisdiction that has members or plan liabilities subject to its pension legislation.*

*The optional methodologies are simplified approaches to allocating plan assets into jurisdictional portions that can be used instead of the standard methodology in certain circumstances with the permission of the major authority.*

*The optional methodology in clause 11(3)(a) of the Agreement can be applied in any situation where an allocation of assets is required by the Agreement except upon the full wind up of a pension plan. In order to use this optional methodology, a Fellow of the Canadian Institute of Actuaries must certify that:*

- 1) the plan is fully funded on a solvency and a going concern basis; and*
- 2) the end result from using the optional methodology would not differ materially from the allocation of assets under the standard methodology.*

*The optional methodology in clause 11(3)(b) of the Agreement can only be applied where an allocation of assets is required by the Agreement upon the partial wind up of a pension plan. In order to use this optional methodology:*

- 1) no pension legislation of any jurisdiction affected by the partial plan wind up can require the distribution of any assets related to the wound up part of the plan that remain after all liabilities related to the partial wind up have been settled; and*
- 2) a Fellow of the Canadian Institute of Actuaries must certify that the wound up part of the plan is fully funded on a solvency and a going concern basis immediately before the partial wind up.*

**Text from Agreement:**

**SECTION 12**

**PLAN WITH MORE THAN ONE PARTICIPATING EMPLOYER**

**Plan with more than one participating employer**

**12.** (1) This section applies to a pension plan that has more than one participating employer and, in accordance with the pension legislation of the major authority's jurisdiction:

- (a) the following are determined and accounted for separately in respect of an employer that participates in the plan, as if a separate pension plan was established within the plan in respect of that employer:
  - (i) the assets and liabilities of the plan;
  - (ii) the contributions payable in relation to the plan;
  - (iii) the benefits and other amounts owing under the plan; and
  - (iv) the expenses payable in relation to the plan;
- (b) the liabilities of the plan related to the employer described in clause (a) are determined with reference to only the benefits and other amounts owing to a person in relation to that person's employment with that employer; and
- (c) among the contributions payable in relation to the plan by the employer described in clause (a), those that are required to be paid under the applicable pension legislation in relation to benefits and other amounts currently accruing by active members of the plan are determined only with reference to active members employed by that employer.

**Allocation of assets into employer shares**

(2) For the purposes of an asset allocation under this Part involving a pension plan described in subsection (1), the assets of the plan that have been determined and accounted for separately in relation to an employer as of the date of allocation shall be allocated to that employer as an employer share if the plan characteristics described in clause (a) of subsection (1) respecting the employer:

- (a) have been determined and accounted for separately since the start of the employer's participation in the plan; or

- (b) began to be determined and accounted for separately at a date subsequent to the start of the employer's participation in the plan, and the initial determination and accounting of the assets of the plan respecting that employer was consistent with, and conducted on the basis of, an allocation of the assets of the plan in accordance with the requirements of this Part and in relation to a situation other than that described in clause (c), (d) or (e) of section 10.

#### **Allocation of employer shares into portions**

(3) Any employer share allocated in accordance with subsection (2) shall be further allocated into portions in the manner provided for in section 11, and used in the manner provided for in section ~~1617~~, as if the employer share consisted of the assets of a separate pension plan for that employer.

#### **Allocation of remaining assets into portions**

(4) For the purposes of an asset allocation under this Part involving a pension plan described in subsection (1), any assets of the plan not allocated to an employer share in accordance with subsection (2) shall be allocated into portions in the manner provided for in section 11, and used in the manner provided for in section ~~1617~~, without considering the liabilities described in clause (b) of subsection (1) related to an employer for which an employer share has been allocated under this section.

#### **Explanatory Notes:**

*This section sets out specific rules for the allocation of assets for a particular type of multi-employer pension plan, involving plan members related to a participating employer for which a separate account has been established and administered under the plan regarding the assets, liabilities, contributions, benefits and expenses of that employer and its plan members, as if that account was a separate pension plan. For example, Alberta's pension legislation provides for the establishment of "multi-unit pension plans".*

*This section is only applicable to such a pension plan if the elements referred to above have been determined and accounted for separately:*

- since the start of the employer's participation in the plan; or*
- after the start of the employer's participation in the plan, where the initial allocation of plan assets to the employer's account was made in accordance with the method for allocating assets in the event of the splitting of a pension plan as described in clauses 10(a) or (b) of the Agreement.*

*This section can apply to a pension plan even where separate accounting is only used for some of the employers that participate in the plan.*

*Where this section applies with respect to the allocation of a pension plan's assets, the assets of the plan that have been determined and accounted for separately for an employer would constitute an "employer share" in relation to that employer. Each employer share determined in relation to the plan would then be further allocated into jurisdictional portions in accordance with the asset allocation methodology set out in section 11 of the Agreement.*

**Examples:**

- 1) *An employer participates in a pension plan with more than one participating employer. A separate account was established and has been maintained since the start of that employer's participation in the plan consistent section 12 of the Agreement. The employer employs members in Ontario and Quebec.*

*The employer decides to establish its own successor pension plan for all of its employees, regardless of their jurisdiction of employment. The original pension plan will also be amended to transfer the assets and liabilities of that employer's plan members to the successor plan. As a result, the assets of the original plan related to the employer's separate account under that plan would constitute that employer's employer share for the purposes of section 12 of the Agreement, and those assets would be transferred to the successor plan after all required regulatory approvals have been obtained.*

- 2) *The employer described in example 1 above decides to establish a successor plan, but only for its Ontario employees. The original pension plan will also be amended to transfer the assets and liabilities of that employer's Ontario plan members to the successor plan. As a result, the assets of the original plan related to the employer's separate account under that plan would constitute that employer's employer share for the purposes of section 12 of the Agreement. That employer share would then be further allocated into Ontario and Quebec portions in accordance with section 11 of the Agreement. The Ontario portion so determined would then be transferred to the successor plan after all required regulatory approvals have been obtained.*

**Text from Agreement:**

**SECTION 13**

**DETERMINATION OF PORTIONS FOR ASSET ALLOCATION**

**Determination of portions**

**13.** (1) The assets of a pension plan that are to be allocated into portions in accordance with subsection (2) of section 11 shall be allocated into portions as of the date of allocation in accordance with the levels of priority of allocation set out in this section.

**Contributions and similar amounts**

(2) First, allocate assets of the pension plan equal to the sum of the following contributions and amounts, to the extent that such contributions and amounts are still credited to the account of a person having benefits under the plan on the date of allocation:

- (a) any contributions paid into the pension fund of the plan and any amounts that the person had elected to transfer into the pension fund of the plan, other than contributions and amounts used to fund benefits that are not determined solely as a function of amounts credited to the account of the person; and
- (b) any interest attributable to contributions or amounts described in clause (a).

**Core liabilities**

(3) Second, allocate assets of the pension plan equal to the sum of the following liability amounts, provided that the pension legislation that governs would govern those liabilities requires if this Agreement did not exist would require them to be funded on a solvency basis:

- (a) the value of benefits under the plan that are being paid on a regular and periodic basis to any person on the date of allocation, whether or not the benefit is payable for the lifetime of the person, and determined taking into account:
  - (i) any periodic increase in the benefits, based on any index, rate or formula provided for in the plan; and
  - (ii) any related benefits that are payable due to the death of the person;
- (b) the value of lifetime benefits accrued under the plan by any person who, on the date of allocation, is entitled to receive payment of the benefits on that



date or a later date, but who is not in receipt of payment of the benefits as of the date of allocation, determined:

- (i) using the earliest age at which all such persons are entitled to payment of unreduced lifetime benefits, without reference to any other requirements or conditions under the terms of the plan or any applicable pension legislation;
  - (ii) taking into account any post-retirement periodic increase in the lifetime benefits, based on any index, rate or formula provided for in the plan; and
  - (iii) taking into account any related benefits that are payable due to the death of the person, whether such death occurs before or after the person starts receiving payment of lifetime benefits under the plan and determined at the age described in subclause (i);
- (c) in respect of any person who has been required to make contributions under the plan, the amount by which the contributions made by the person plus any interest attributable to those contributions exceeds the amount representing 50% of the value of the benefits payable to the person under the plan, subject to the following requirements:
- (i) the contributions, interest and value of the benefits shall be calculated as of the date of allocation and consistent with either the pension legislation that governs the benefits or the terms of the plan, whichever produces a larger excess amount; and
  - (ii) any such excess amount already determined in relation to a person before the date of allocation shall not be included, whether or not such previously determined excess amount has been refunded to the person; and
- (d) any unpaid part of the value of the benefits payable under the plan to a person who had elected before the date of allocation to be paid the value of the person's benefit entitlements under the plan, as well as any interest attributable to that unpaid part.

**Other liabilities whose funding is required**

(4) Third, allocate assets of the pension plan equal to the sum of the following liability amounts:

- (a) the value of benefits accrued under the plan, other than those referred to in subsection (3), by any person who, on the date of allocation, is entitled to

receive payment of the benefit on that date or a later date, but who is not in receipt of payment of the benefit as of the date of allocation, provided that the pension legislation that governs would govern the benefits requires if this Agreement did not exist would require that such benefits be funded on a solvency basis; and

- (b) subject to subsection (5), the value of the additional liability referred to in clause (b) of subsection (2) of section 6.

#### **Assets related to additional liability**

(5) Where the assets of the pension plan that are allocated to a portion under subsections (2), (3) and (4) in the absence of the requirements of this subsection exceed the value of benefits and other amounts accrued under the plan that are related to that portion:

- (a) the value calculated for clause (b) of subsection (4) shall be reduced by the excess amount referred to in this subsection; and
- (b) the assets of the plan not allocated to a portion due to the application of clause (a) may be allocated to other portions in accordance with subsection (4).

#### **Balance of assets**

(6) Fourth, for the purposes of an asset allocation in any situation other than that described in clause (c), (d) or (e) of section 10:

- (a) any assets of the pension plan remaining after the allocations made in accordance with subsections (2) to (4) shall be sequentially allocated to the portion or portions with the lowest going concern ratio, until the going concern ratio of that portion equals the going concern ratio of the portion with the next highest going concern ratio;
- (b) the sequential allocation of the plan's assets described in clause (a) shall be made until all portions have the same going concern ratio or no assets remain to be allocated, whichever occurs first;
- (c) if, after applying the sequential allocation of assets described in clauses (a) and (b), the going concern ratio of each portion is lower than 1.0, any assets of the pension plan yet to be allocated shall be allocated to the portions so that the going concern ratios of all portions remain the same, until the going concern ratio of each portion reaches 1.0 or no assets remain to be allocated, whichever occurs first;

- (d) for the purposes of clauses (a), (b) and (c), the going concern ratio of a portion shall be calculated by using the assets of the pension plan allocated to the portion in accordance with this section and the going concern liabilities of the plan that are subject to the jurisdiction's pension legislation applicable to that portion, other than assets and liabilities related to contributions and amounts described in subsection (2); and
- (e) any assets of the pension plan remaining after the allocations made in accordance with clauses (a), (b) and (c) shall be allocated pro rata to the total of the going concern liabilities determined for each portion.

**Balance of assets for certain asset allocations**

(7) Fourth, for the purposes of an asset allocation in a situation described in clause (c), (d) or (e) of section 10:

- (a) allocate assets of the pension plan equal to the value of benefits accrued under the plan, other than those referred to in subsections (2), (3) or (4), to which persons are entitled under the plan as of the date of allocation; and
- (b) any assets of the pension plan remaining after the allocations made in accordance with subsections (2) to (5) and clause (a) shall be allocated pro rata to the total of the values determined for each portion in applying subsections (2) and (3) and clause (a) of subsection (4).

**Explanatory Notes:**

*This section establishes levels of priority for allocating the assets of a pension plan into jurisdictional portions when the asset allocation is to be conducted using the standard allocation methodology described in subsection 11(2) of the Agreement.*

***An overview of the levels of priority***

*This section requires that plan assets be allocated into jurisdictional portions according to four levels of priority. The first three levels of priority are based on the liabilities of the plan that would arise if the plan were to wind up on the date of the asset allocation (see subsection 14(2) of the Agreement). This approach provides a level of protection to plan members in instances where, for example, a plan split and resulting transfer of assets from the plan is immediately followed by a full wind up of the plan. In such circumstances, if the value of the plan's assets, calculated on a wind up basis, is less than the value of its wind up liabilities for the benefits that are required by the legislation that governs those benefits to be funded, then the assets that have been transferred to the other pension plan, as well as those remaining in the initial plan, should enable both plans to provide a comparable level of benefit security to the affected plan members.*

**First level of priority**

*The first level of priority for allocating a pension plan's assets under subsection 13(2) of the Agreement covers the value of benefits determined solely as a function of amounts credited to the account of a person having benefits under the plan. This includes employer and employee contributions made under a defined contribution component of the plan, optional ancillary contributions made under a flexible component of the plan, additional voluntary contributions made by plan members, lump sum amounts that a person has elected to transfer into the pension fund of the plan and excess contributions determined in the application of a pension legislation's 50% rule before the date of allocation. The first level of priority also includes the interest attributable to the amounts described above.*

*It is important to note that the contributions or other amounts described above must still be credited to the account of the person on the date of allocation, and that any contributions or amounts that have been converted into lifetime or periodic benefit entitlements are not covered under the first level of priority. For example, lump sum amounts that have been transferred from one pension plan and are immediately used to recognize years of service and provide additional benefit entitlements under another pension plan will not be covered under the first level of priority.*

**Second level of priority**

*The second level of priority covers what are referred to in subsection 13(3) of the Agreement as the "core liabilities" of the pension plan.*

*In order for a plan liability to qualify as a core liability for the purposes of the asset allocation, the jurisdiction's pension legislation that governs the liability must require its funding on a solvency basis. For example, post-retirement indexation of benefits under a pension plan is a potential core liability under subsection 13(3) of the Agreement. Post-retirement indexation is not required to be funded on a solvency basis under Ontario's pension legislation, but is required to be funded on a solvency basis under Quebec's pension legislation. As a result, for a pension plan with members employed in both Ontario and Quebec, the value of any post-retirement indexation provided under the plan will not be a core liability in relation to Ontario members, but will be a core liability in relation to the Quebec members. This will be the case even if the plan has actually been funding the post-retirement indexation on a solvency basis for all members, including the Ontario members, before the date of allocation.*

*The value of the core liabilities that relate to a pension plan and to a jurisdictional portion of the plan's assets is equal to the sum of the value of the following four components, all of which are determined on a wind up basis (and which must be required to be funded on a solvency basis by that jurisdiction's pension legislation):*

- the value of benefits that are being paid on a regular and periodic basis by the plan on the date of allocation. This includes both lifetime benefits (e.g., the normal pension) and temporary benefits (e.g., bridge benefits);*

- *the value of accrued lifetime benefits that are not yet in payment on the date of allocation, including the value of the following benefits that are related to such lifetime benefits:*
  - *pre-retirement death benefits;*
  - *post-retirement death benefits;*
  - *post-retirement indexation;*
- *the value of any excess contributions resulting from application of the 50% rule under pension legislation, where those excess contributions were not already determined before the date of allocation and not already included in the first level of priority; and*
- *for a person who had elected to be paid the commuted value of his or her benefit entitlements under the plan before the date of allocation, but such commuted value has yet to be fully paid out by that date, the unpaid balance of the commuted value and any interest attributable to that balance.*

### ***Third level of priority***

*The third level of priority in subsection 13(4) of the Agreement covers the value of any plan liabilities that are required to be funded on a solvency basis by the jurisdiction's pension legislation that governs the liabilities, where those liabilities are not covered in the core liabilities. The value of these liabilities is also determined on a wind up basis.*

*The following is a non-exhaustive list of plan liabilities that could be included in the third level of priority, where such liabilities are required to be funded on a solvency basis by the jurisdiction's pension legislation that governs the liabilities and the liabilities are not covered in the core liabilities:*

- *pre-retirement inflation adjustment (including the "additional benefit" under Quebec's pension legislation)*
- *disability benefits (not already in payment)*
- *grow-in benefits (as provided under Ontario's pension legislation)*
- *bridging benefits*
- *subsidized early retirement benefits*
- *consent benefits*

*The third level of priority also includes what is referred to in the Agreement as an "additional liability". The pension legislation of a jurisdiction may provide additional benefit security for pension plan members employed in its jurisdiction by requiring that an additional liability be established and funded in relation to those members. The third level of priority in the asset allocation will recognize such an additional liability with respect to a jurisdiction as long as:*

- *the additional liability is required under that jurisdiction's pension legislation to be funded on a solvency basis; and*
- *that jurisdiction's pension legislation specifies that the additional liability is established and funded for the purposes of section 6(2)(b) of the Agreement.*

*Where an additional liability is recognized in the third level of priority with respect to a jurisdiction, if the assets of a pension plan (including those related to the additional liability) allocated to that jurisdiction's portion under the first, second and third levels of priority exceeds the total plan liabilities for that jurisdiction calculated under those levels of priority, the plan assets allocated to that jurisdictional portion due to the additional liability will be reduced until that portion's allocated assets equal its liabilities, and the plan assets formerly allocated to that jurisdiction due to the additional liability may be allocated to other jurisdictional portions in accordance with the third level of priority.*

**Fourth level of priority**

*The rules for allocating the assets of a pension plan under the fourth level of priority vary depending on whether the asset allocation is the result of either:*

- *the full or partial wind up of the plan, or the withdrawal of an employer from a multi-employer pension plan, as described in clauses 10(c), (d) and (e) of the Agreement (referred to below as a "plan wind up situation"); or*
- *the split of the pension plan or a payment of assets to the employer in a non-plan wind up situation, as described in clauses 10(a), (b) and (f) of the Agreement (referred to below as a "non-plan wind up situation").*

**A) Rules for plan wind up situations:**

*In a plan wind up situation, the fourth level of priority in subsection 13(7) of the Agreement involves two steps.*

*The first step is to allocate plan assets to cover, for each jurisdiction, the value of plan benefits that are governed by that jurisdiction's pension legislation and that are not required by that jurisdiction's pension legislation to be funded on a solvency basis.*

*Any plan assets that remain after the first step described above would be allocated among each jurisdictional portion according to the following formula:*

		Value, for that jurisdictional portion, of all plan liability amounts calculated under the first, second and third levels of priority that are required by that jurisdiction's pension legislation to be funded on a solvency basis <sup>1</sup>
Remaining assets	X	-----
		Value, for all jurisdictional portions, of all plan liability amounts calculated under the first, second and third levels of priority that are required by the pension legislation of the jurisdiction that governs the liability amount to be funded on a solvency basis <sup>1</sup>

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<sup>1</sup> *Excluding any liability amount related to an additional liability established under the pension legislation of a jurisdiction*

*The formula above focuses mainly but not solely upon the plan benefits that were most pertinent in creating the remaining assets. As such, the value of plan benefits that are not required to be funded under the applicable jurisdiction's pension legislation is not taken into consideration for the allocation of the plan's remaining assets among jurisdictional portions. By including the value of contributions and other amounts covered under the first level of priority, the allocation methodology under this fourth level of priority will accommodate even the case of a pure defined contribution plan (i.e., one that has no defined benefit component whatsoever) with assets in excess of its liabilities (e.g., as may be the result after the full conversion of a defined benefit plan into a defined contribution plan).*

**B) Rules for non-plan wind up situations:**

*In a non-plan wind up situation, the fourth level of priority in subsection 13(76) of the Agreement also involves two steps. First, all remaining plan assets would be allocated to the jurisdictional portions with the lowest going concern ratios in order to produce, to the extent possible, the same going concern ratio for each jurisdictional portion. When all portions have the same going concern ratio, if that ratio is lower than 1.0, any remaining plan assets will continue to be allocated to the portions so that the going concern ratio of each portion rises uniformly until the going concern ratio of each portion reaches 1.0. For the purposes of this first step, the going concern ratio of a jurisdictional portion is determined without taking into account the contributions and amounts covered under the first level of priority.*

*If any plan assets still remain to be allocated after the first step described above, the second step requires a final allocation to be done pro rata to the total going concern liabilities of each portion. All going concern liabilities are taken into account in this second step, including those that relate to the contributions and amounts covered under the first level of priority. Doing so will accommodate even the case of a pure defined contribution plan with assets in excess of its liabilities.*

**Examples:**

**A) Core liabilities under the second level of priority and subsection 13(3) of the Agreement:**

- 1) A pension plan has a normal retirement age of 65. The plan does not provide for an unreduced lifetime benefit for members below the normal retirement age of 65. In this situation, the value of the plan's core liabilities respecting a member of the plan who has yet to commence payment of a pension on the allocation date will be calculated using the lifetime benefit payable to such member at age 65, provided that the pension legislation of the member's jurisdiction of employment requires such a lifetime benefit to be funded on a solvency basis.*
- 2) A pension plan has a normal retirement age of 65. However, all members of the plan are entitled to an unreduced lifetime benefit at age 60. In this situation, the value of*

*the plan's core liabilities respecting a member of the plan who has yet to commence payment of a pension on the allocation date will be calculated using the lifetime benefit payable to such member at age 60, provided that the pension legislation of the member's jurisdiction of employment requires such a lifetime benefit to be funded on a solvency basis.*

- 3) *A pension plan has a normal retirement age of 65. A member of the plan is entitled to an unreduced lifetime benefit at age 60 if the member is still an active member when the request to commence payment of the member's pension is made (i.e., a member who ceases to be an active member before age 60 is not eligible for that benefit). In this situation, the value of the plan's core liabilities respecting a member of the plan who has yet to commence payment of a pension on the allocation date will be calculated using the lifetime benefit payable to such member at age 65, provided that the pension legislation of the member's jurisdiction of employment requires such a lifetime benefit to be funded on a solvency basis.*
- 4) *A pension plan has a normal retirement age of 65. However, all members of the plan are entitled to an unreduced lifetime benefit at age 60. One particular member has met the conditions in the plan terms or applicable pension legislation to receive an unreduced pension at age 55. In this situation, the value of the plan's core liabilities respecting this member, as for all plan members who have yet to commence payment of a pension on the allocation date, will be calculated using the lifetime benefit payable to such member at age 60, provided that the pension legislation of the member's jurisdiction of employment requires such a lifetime benefit to be funded on a solvency basis. The amount by which the value of the unreduced pension payable to this particular member at age 55 exceeds the value of the unreduced pension payable at age 60 will be a benefit liability covered under the third level of priority for the plan's allocation of assets, as set out in clause 13(4)(b) of the Agreement.*
- 5) *A pension plan provides a pre-retirement indexation benefit to all of its members. The plan's liability for such a benefit in relation to any member would not be counted as a core liability for the purposes of the second level of priority in allocating the assets of the plan.*
- 6) *A pension plan provides a post-retirement indexation benefit to all of its members. The plan's liability for such a benefit in relation to a member would be counted as a core liability for the purposes of the second level of priority in allocating the assets of the plan if the pension legislation of the member's jurisdiction of employment requires post-retirement indexation benefits to be funded on a solvency basis (e.g., as under Quebec's pension legislation). The plan's liability for such a benefit would not be counted as a core liability for the purposes of the second level of priority if the pension legislation of the member's jurisdiction of employment does not require*



*post-retirement indexation benefits to be funded on a solvency basis (e.g., as under Ontario's pension legislation).*

**B) Plan wind up situations:**

- 1) *A hybrid defined benefit/defined contribution multi-jurisdictional pension plan registered with the Financial Services Commission of Ontario is to be partially wound up due to the closure of the employer's business division dealing with inter-provincial transportation. The employees of the affected business division are the only members of the plan that are subject to the federal pension legislation. An actuary is retained by the plan to calculate the allocation of plan assets among the various jurisdictional portions as required under the Agreement. The following table illustrates the relevant plan liability components related to each level of priority under section 13 of the Agreement for each jurisdictional portion respecting this plan:*

**Value of relevant liability components for each jurisdictional portion**

	<b>British Columbia</b>	<b>Federal</b>	<b>Ontario</b>	<b>Quebec</b>	<b>Total</b>
<b>Defined contribution component</b>	15	10	150	125	300
<b>Core liabilities</b>	75	85	1200	1000	2360
<b>Other liabilities whose funding is required<sup>2</sup></b>	5	10	250	115	380
<b>Other liabilities whose funding is not required<sup>2</sup></b>	0	0	150	0	150
<b>Total liabilities</b>	95	105	1750	1240	3190

*For the purposes of this example, assume that no "additional liability" has been established for the plan in relation to any applicable jurisdiction. Assume also that the total market value of the plan's assets is 3300. In this situation, the overall wind up ratio of the pension plan is 103.4%, calculated by including the assets and liabilities of the defined contribution component of the plan. The market value of plan assets (3300) exceeds the amount required to cover the first three levels of priority for the allocation of assets, as well as the plan liabilities that are not required to be funded on a solvency basis (300 + 2360 + 380 + 150 = 3190). As a result, it must be determined how the remaining plan assets (110 = 3300 – 3190) will be allocated among the four jurisdictional portions.*

<sup>2</sup> *For all examples related to Section 13 of the Agreement, meaning benefits required to be funded on a solvency basis by the jurisdiction's pension legislation that applies to the benefit in question.*

**Allocation of remaining assets**

	<b>British Columbia</b>	<b>Federal</b>	<b>Ontario</b>	<b>Quebec</b>	<b>Total</b>
<b>Value of benefits covered under the first three levels of priority</b>	95.0	105.0	1600.0	1240.0	3040.0
<b>Remaining plan assets allocated</b>	3.4	3.8	57.9	44.9	110.0

*The value of the benefits that are covered under the first three levels of priority are those for which funding on a solvency basis is required by the applicable pension legislation. As shown in the table above, the total value of those benefits for the federal jurisdictional portion is 105. In addition, the total value of the benefits for which funding is required on a solvency basis for all jurisdictional portions is 3040, and the value of the remaining plan assets that must be allocated among jurisdictional portions is equal to 110. Consequently, the share of the remaining plan assets to be allocated to the federal portion is calculated as:*

$$\frac{105}{3040} \times 110 = 3.8$$

*The following table summarizes the results of the entire asset allocation process:*

**Allocation of assets in accordance with the methodology set out in the Agreement**

	<b>British Columbia</b>	<b>Federal</b>	<b>Ontario</b>	<b>Quebec</b>	<b>Total assets allocated</b>
<b>First level of priority</b>	15.0	10.0	150.0	125.0	300.0
<b>Second level of priority</b>	75.0	85.0	1200.0	1000.0	2360.0
<b>Third level of priority</b>	5.0	10.0	250.0	115.0	380.0
<b>Fourth level of priority</b>	3.4	3.8	207.9	44.9	260.0
<b>Total assets allocated (by jurisdictional portion)</b>	98.4	108.8	1807.9	1284.9	3300.0
<b>Final solvency ratio (by jurisdictional portion)</b>	103.6%	103.6%	103.3%	103.6%	103.4%

*As shown in the table above, the final solvency ratio for the Ontario portion is lower than that calculated for the other three jurisdictional portions. This is because Ontario is the only one of the four jurisdictions in this example that has plan liabilities*

*not required to be funded on a solvency basis. As noted above, such liabilities are not taken into account when allocating the remaining plan assets among jurisdiction portions once all plan liabilities are satisfied under the fourth level of priority.*

*The total plan assets allocated to the federal portion equal 108.8 and the total plan liabilities for members subject to the pension legislation of the federal jurisdiction are equal to 105. How those plan assets of 108.8 will be used to settle the benefits of the plan members subject to the federal pension legislation will be determined in accordance with that legislation.*

- 2) *A multi-jurisdictional pension plan, which is a pure defined contribution pension plan, is registered with the Régie des rentes du Québec and is to be fully wound up. The relevant plan liability components related to each level of priority under section 13 of the Agreement for each jurisdictional portion respecting this plan are as follows:*

#### **Value of relevant liability components for each jurisdictional portion**

	<b>British Columbia</b>	<b>Federal</b>	<b>Ontario</b>	<b>Québec</b>	<b>Total</b>
<b>Defined contribution component</b>	150	100	600	850	1700
<b>Total liabilities</b>	150	100	600	850	1700

*For the purposes of this example, assume that the total market value of plan assets is 1825.*

*This example raises the issue of allocating assets among jurisdictional portions for a pure defined contribution pension plan whose total assets exceed its total liabilities. The following table illustrates how the remaining plan assets (125 = 1825 – 1700) in this example will be allocated among the four jurisdictional portions involved.*

#### **Allocation of remaining assets**

	<b>British Columbia</b>	<b>Federal</b>	<b>Ontario</b>	<b>Quebec</b>	<b>Total</b>
<b>Value of benefits covered under the first level of priority</b>	150.0	100.0	600.0	850.0	1700.0
<b>Remaining plan assets allocated</b>	11.0	7.4	44.1	62.5	125.0

*Under the asset allocation method in the Agreement, the allocation of the remaining plan assets is based on the values of the plan benefits and liability amounts covered*

under the first three levels of priority. For a pure defined contribution pension plan, all those values are part of the first level of priority. Consequently, the remaining plan assets in this example are allocated pro rata to the total of the values determined for each jurisdictional portion under the first level of priority. For example, the share of the remaining plan assets to be allocated to the Québec portion is calculated as:

$$\frac{850}{1700} \times 125 = 62.5$$

The following table summarizes the results of the entire asset allocation process:

#### Allocation of assets in accordance with the methodology set out in the Agreement

	British Columbia	Federal	Ontario	Quebec	Total assets allocated
<b>First level of priority</b>	150.0	100.0	600.0	850.0	1700.0
<b>Fourth level of priority</b>	11.0	7.4	44.1	62.5	125.0
<b>Total assets allocated (by jurisdictional portion)</b>	161.0	107.4	644.1	912.5	1825.0

- 3) A multi-jurisdictional pension plan registered with the Financial Services Commission of Ontario is to be fully wound up. The following table illustrates the relevant plan liability components related to each level of priority under section 13 of the Agreement for each jurisdictional portion respecting this plan:

#### Value of relevant liability components for each jurisdictional portion

	British Columbia	Federal	Ontario	Quebec	Total
<b>Defined contribution component</b>	15	10	150	125	300
<b>Core liabilities</b>	75	85	1200	1000	2360
<b>Other liabilities whose funding is required</b>					
• <b>Benefit liabilities other than core liabilities</b>	5	10	250	115	380
• <b>Additional liability</b>	0	0	0	80	80
<b>Other liabilities whose funding is not required</b>	0	0	150	0	150
<b>Total liabilities (excluding the additional liability)</b>	95	105	1750	1240	3190

*On the plan's wind up date (which is also the asset allocation date), British Columbia's pension legislation contains a temporary moratorium respecting that legislation's requirements to fund pension plans on a solvency basis. This moratorium has been in place for three years and allows an employer to avoid making special payments to a plan's pension fund in relation to the plan's solvency deficiency. Since this is a temporary moratorium and not a permanent measure, plan liabilities related to British Columbia members will continue to be accounted for under the second and third levels of priority as provided for under the rules of allocation for those levels of priority, rather than all such liabilities falling to the fourth level of priority.*

*The total market value of plan assets is 2950. Consequently, the solvency ratio of the plan as a whole is 92.5%, calculated by including the assets and liabilities of the defined contribution component of the plan.*

*Since the market value of plan assets (2950) exceeds the sum of the values for the plan's defined contribution component and core liabilities ( $300 + 2360 = 2660$ ), the first two levels of priority in the asset allocation will be fully covered.*

*The third level of priority in the asset allocation relates to other plan liabilities whose funding is required by the applicable pension legislation and is divided into two categories: **"benefits other than those referred to in core liabilities"** and the **"additional liability"**. For the purposes of this example, assume that more than five years ago Quebec's pension legislation required the establishment of an additional liability for all Quebec plan members (in this case, a special "provision for adverse deviation" or PfAD) that is recognized for the purposes of the Agreement, and Quebec's legislation requires that this additional liability be funded on a solvency basis. As a result, an additional liability of 80 appears in the above table with respect to the Quebec jurisdictional portion.*

*Based on these assumptions, plan assets of 290 ( $2950 - 2660$ ) remain to be allocated under the third level of priority. In this example, the allocation of those assets (290) will require two steps. The table below helps to understand how the initial allocation will be done.*

**Initial allocation of assets under third level of priority (Other liabilities whose funding is required)**

	British Columbia	Federal	Ontario	Quebec	Total
<b>Assets needed to cover benefits other than those referred to in core liabilities</b>	5.0	10.0	250.0	115.0	380.0
<b>Assets needed to cover benefits other than those referred to in core liabilities and the additional liability</b>	5.0	10.0	250.0	195.0	460.0
<b>Initial asset allocation, taking into account the additional liability</b>	3.2	6.3	157.6	122.9	290.0

*The value of the plan's "benefits other than those referred to in core liabilities" and "additional liability" (460) for all jurisdictional portions exceeds by far the remaining plan assets available (290). In accordance with section 16 of the Agreement, the available plan assets are therefore initially allocated to the jurisdictional portions pro rata to the total value of the other liabilities that rank equally in the third level of priority. In this example, the pro rata ratio is equal to 0.63 (290 divided by 460). Applying that ratio to the Quebec liabilities at the third level of priority results in an initial plan asset allocation amount of 122.9 (0.63 x 195.0) to the Quebec jurisdictional portion at this level of priority.*

*However, this initial asset allocation amount (122.9) to the Quebec portion at this level of priority exceeds the value of the benefits at this level of priority whose funding is required by Quebec's pension legislation by 7.9 (122.9 – 115.0). In accordance with subsection 13(5) of the Agreement, that excess of 7.9 will be subtracted from the asset allocation made to the Quebec portion at this level of priority and will be allocated to the other jurisdictional portions.*

*In the table below, the value of all plan benefit liabilities not covered by the initial asset allocation at the third level of priority is 97.9. The 7.9 in plan assets subtracted from the Quebec portion is allocated to the other jurisdictional portions pro rata to the total value of all plan benefit liabilities not covered by the initial asset allocation at this level of priority. In this example, the pro rata ratio is equal to 0.081 (7.9 divided by 97.9), and that ratio is applied to the benefit liabilities of a jurisdictional portion that were not covered by the initial asset allocation at this level of priority to determine the additional amount to be allocated to that portion (see table below). For instance, applying that ratio to the Ontario portion results in additional plan assets of 7.5 (0.081 x 92.4) being allocated to the Ontario portion.*

**Final allocation of assets under the third level of priority (Other liabilities whose funding is required)**

	British Columbia	Federal	Ontario	Québec	Total
<b>Assets needed to cover benefits other than those referred to in core liabilities</b>	5.0	10.0	250.0	115.0	380.0
<b>Initial asset allocation, taking into account the full Quebec additional liability</b>	3.2	6.3	157.6	122.9	290.0
<b>Revised initial asset allocation, reducing excess Quebec additional liability amount</b>	3.2	6.3	157.6	115.0	282.1
<b>Liabilities not covered by the initial asset allocation</b>	1.8	3.7	92.4	0.0	97.9
<b>Allocation of the excess Quebec additional amount</b>	0.1	0.3	7.5	0.0	7.9
<b>Final asset allocation at this third level of priority</b>	3.3	6.6	165.1	115.0	290.0

*The allocation of the plan's assets at the third level of priority is now complete. The following table summarizes the results of the entire asset allocation process:*

**Allocation of assets in accordance with the methodology set out in the Agreement**

	British Columbia	Federal	Ontario	Quebec	Total
<b>First level of priority</b>	15.0	10.0	150.0	125.0	300.0
<b>Second level of priority</b>	75.0	85.0	1200.0	1000.0	2360.0
<b>Third level of priority</b>	3.3	6.6	165.1	115.0	290.0
<b>Forth level of priority</b>	0.0	0.0	0.0	0.0	0.0
<b>Total assets allocated (by jurisdictional portion)</b>	93.3	101.6	1515.1	1240.0	2900.0

*How the plan assets allocated to a particular jurisdictional portion will be used to settle the benefits of the plan members that are subject to that jurisdiction's pension legislation will be determined in accordance with that legislation.*

**C) Non-plan wind up situations:**

- 1) *Part of the assets of a multi-jurisdictional pension plan registered with the Financial Services Commission of Ontario are to be transferred to a pension plan registered with the federal Office of the Superintendent of Financial Institutions due to the sale of the original employer's business division dealing with inter-provincial transportation. The employees of the affected business division are the only members of the original plan that are subject to the federal pension legislation. The following table illustrates the relevant liability components of the original plan related to each level of priority under section 13 of the Agreement for each jurisdictional portion respecting this plan:*

**Value of relevant liability components for each jurisdictional portion**

	<b>British Columbia</b>	<b>Federal</b>	<b>Ontario</b>	<b>Québec</b>	<b>Total</b>
<b>Defined contribution component</b>	15	10	200	125	350
<b>Core liabilities</b>	75	85	1250	1000	2410
<b>Other liabilities whose funding is required</b>	5	10	300	115	430
<b>Other liabilities whose funding is not required</b>	0	0	150	0	150
<b>Total liabilities (on solvency basis)</b>	95	105	1900	1240	3340
<b>Going concern liabilities</b>	115	130	2000	1625	3870

*For the purposes of this example, assume that no “additional liability” has been established for the plan in relation to any applicable jurisdiction. Assume also that the total market value of the plan's assets is 2900. In this situation, the overall wind up ratio of the pension plan is 86.8% and its overall going concern ratio is 74.9%, both calculated by including the assets and liabilities of the defined contribution component of the plan.*

*Since the market value of plan assets (2900) exceeds the sum of the values for the plan's defined contribution component and core liabilities (350 + 2410 = 2760), the first two levels of priority under the asset allocation will be fully covered.*

*In this example, plan assets of 140 (2900 – 2760) would remain to be allocated to jurisdictional portions under the third level of priority. The following table illustrates how the allocation of plan assets at the third level of priority would be conducted:*



**Allocation of remaining assets under the third level of priority**

	British Columbia	Federal	Ontario	Québec	Total
<b>Other liabilities whose funding is required</b>	5.0	10.0	300.0	115.0	430.0
<b>Remaining plan assets allocated</b>	1.6	3.3	97.7	37.4	140.0

*The value of the plan's "other liabilities whose funding is required" (430) exceeds the remaining plan assets available (140). In accordance with section 16 of the Agreement, the available plan assets are therefore allocated to the jurisdictional portions pro rata to the total value of the liabilities that rank equally in the third level of priority. In this example, the pro rata ratio is equal to 0.3256 (140 divided by 430), and that ratio is applied to a jurisdictional portion's "other benefits whose funding is required" to determine the amount of the remaining plan assets to allocate to that portion. For instance, applying that ratio to the Ontario portion results in 97.7 (0.3256 x 300.0) of the remaining plan assets being allocated to the Ontario portion.*

*The following table summarizes the results of the entire asset allocation process:*

**Allocation of assets in accordance with the methodology set out in the Agreement**

	British Columbia	Federal	Ontario	Québec	Total assets allocated
<b>First level of priority</b>	15.0	10.0	200.0	125.0	350.0
<b>Second level of priority</b>	75.0	85.0	1250.0	1000.0	2 410.0
<b>Third level of priority</b>	1.6	3.3	97.7	37.4	140.0
<b>Forth level of priority</b>	0.0	0.0	0.0	0.0	0.0
<b>Total assets allocated (by jurisdictional portion)</b>	91.6	98.3	1547.7	1162.4	2900.0

*As shown in the table above, the total plan assets allocated to the federal portion equal 98.3. As provided under section 18 of the Agreement, the federal jurisdiction's pension legislation will govern how those assets can be utilized with respect to the asset transfer.*

- 2) *Part of the assets of a multi-jurisdictional pension plan registered with the Financial Services Commission of Ontario are to be transferred to a different pension plan due to the sale of one of the original employer's business divisions. Some of the employees of the affected business division are subject to Ontario's pension legislation while other employees of the affected business division are subject to Quebec's pension legislation, due to their respective places of employment. After the sale transaction, the plan will continue to have other Ontario and Quebec members. The following table illustrates the relevant liability components of the original plan related to each level of priority under section 13 of the Agreement for each jurisdictional portion respecting this plan.*

**Value of relevant liability components for each jurisdictional portion**

	<b>British Columbia</b>	<b>Federal</b>	<b>Ontario</b>	<b>Québec</b>	<b>Total</b>
<b>Defined contribution component</b>	15	10	200	125	350
<b>Core liabilities</b>	75	85	1250	1000	2410
<b>Other liabilities whose funding is required</b>	5	10	300	115	430
<b>Other liabilities whose funding is not required</b>	0	0	150	0	150
<b>Total liabilities (on solvency basis)</b>	95	105	1900	1240	3340
<b>Going concern liabilities</b>	115	130	2000	1625	3870

*For the purposes of this example, assume that no "additional liability" has been established for the plan in relation to any applicable jurisdiction. Assume also that the total market value of the plan's assets is 3250. In this situation, the overall wind up ratio of the pension plan is 97.3% and its overall going concern ratio is 84.0%, both calculated by including the assets and liabilities of the defined contribution component of the plan.*

*Since the market value of plan assets (3250) exceeds the sum of the values for the plan's defined contribution component, core liabilities and other liabilities whose funding is required (350 + 2410 + 430 = 3190), there are sufficient plan assets to fully cover the first three levels of priority.*

*In this example, plan assets of 60 (3250 – 3190) would remain to be allocated to jurisdictional portions under the fourth level of priority. At the fourth level of priority, plan assets are first allocated to the portion having the lowest initial going concern ratio until that portion's going concern ratio equals that of the jurisdiction with the second lowest initial going concern ratio. Plan assets are then allocated to both of*

those portions such that their going concern ratios rise in a uniform manner until they equal the going concern ratio of the jurisdiction with the third lowest initial going concern ratio, and so on until all portions have the same going concern ratio. The following table illustrates the application of this process:

#### Allocation of remaining assets under the fourth level of priority

	British Columbia	Federal	Ontario	Quebec
Going concern ratio of jurisdictional portion <sup>3</sup>	80.0%	79.2%	86.1%	74.3%
Assets needed to reach second lowest going concern ratio	0.0	0.0	0.0	72.5

In this example, the above table shows that Quebec's portion has the lowest going concern ratio (74.3%). To reach the next highest going concern ratio (79.2% for the federal jurisdiction's portion), plan assets of 72.5 would have to be allocated to the Quebec portion. Consequently, all remaining plan assets (60) would be allocated to the Quebec portion. In this example, that ends the asset allocation process under the fourth level of priority and the overall allocation process.

The following table summarizes the results of the entire asset allocation process:

#### Allocation of assets in accordance with the methodology set out in the Agreement

	British Columbia	Federal	Ontario	Québec	Total assets allocated
First level of priority	15.0	10.0	200.0	125.0	350.0
Second level of priority	75.0	85.0	1250.0	1000.0	2410.0
Third level of priority	5.0	10.0	300.0	115.0	430.0
Fourth level of priority					
• Assets allocated to reach the second lowest going concern ratio	0.0	0.0	0.0	60.0	60.0
<b>Total assets allocated (by jurisdictional portion)</b>	<b>95.0</b>	<b>105.0</b>	<b>1750.0</b>	<b>1300.0</b>	<b>3250.0</b>

<sup>3</sup> In accordance with the Agreement, the going concern ratio for a jurisdictional portion under the fourth level of priority is determined without taking into account plan assets and liabilities covered under the first level of priority, until all portions have the same going concern ratio on that basis and that going concern ratio reaches 1.0.

*As provided under section 18 of the Agreement, Ontario's pension legislation will govern how the assets allocated to Ontario's portion can be utilized with respect to the asset transfer, while Quebec's pension legislation will govern how the assets allocated to Quebec's portion can be utilized with respect to the asset transfer.*

- 3) *A pension plan has the same characteristics as the plan in example 2 above, but the total value of the plan assets is 4000. This example illustrates the application of the asset allocation methodology in a non-plan wind up situation where the plan's assets exceed both the plan's wind up liabilities and going concern liabilities on the allocation date.*

*The following table summarizes the results of the entire asset allocation process:*

**Allocation of assets in accordance with the methodology set out in the Agreement**

	<b>British Columbia</b>	<b>Federal</b>	<b>Ontario</b>	<b>Québec</b>	<b>Total assets allocated</b>
<b>First level of priority</b>	15.0	10.0	200.0	125.0	350.0
<b>Second level of priority</b>	75.0	85.0	1250.0	1000.0	2410.0
<b>Third level of priority</b>	5.0	10.0	300.0	115.0	430.0
<b>Forth level of priority</b>					
• <b>Assets allocated to reach the second lowest going concern ratio</b>	0.0	0.0	0.0	72.5	72.5
• <b>Assets allocated to reach the third lowest going concern ratio</b>	0.0	1.0	0.0	12.5	13.5
• <b>Assets allocated to reach the highest going concern ratio</b>	6.1	7.3	0.0	91.7	105.1
• <b>Assets allocated to reach the going concern ratio of 1.0</b>	13.9	16.7	250.0	208.3	488.9
• <b>Allocation of remaining plan assets</b>	3.9	4.4	67.2	54.6	130.0
<b>Total assets allocated (by jurisdictional portion)</b>	<b>118.9</b>	<b>134.4</b>	<b>2067.2</b>	<b>1679.6</b>	<b>4000.0</b>

**Text from Agreement:****SECTION 14****RULES OF APPLICATION****Alternative funding arrangements**

**14.** (1) For the purposes of this Part, the assets of a pension plan include any alternative funding arrangement described in section 6 that exists in relation to the plan at the time the assets of the plan are allocated into portions in accordance with this Part.

**Determining value of benefits and assets**

(2) For the purposes of sections 11 to 13, except subsection (6) of section 13, the value of the benefits and other amounts payable under a pension plan and the assets of the plan shall be determined as if the pension plan were wound up on the date of allocation.

**Deemed solvency funding requirement**

(3) If, at the time the assets of a pension plan are allocated into portions in accordance with this Part, a liability amount related to the plan or a benefit under the plan that is subject to a jurisdiction's pension legislation would not, if this Agreement did not exist, be required to be funded on a solvency basis due to a temporary suspension under that legislation of a requirement under that legislation that would otherwise require the funding of such liability amount or benefit on a solvency basis, the liability amount or benefit shall be deemed to be one that is required by that legislation to be funded on a solvency basis for the purposes of subsection (3) of section 13 and clause (a) of subsection (4) of section 13.

**Explanatory Notes:**

*This section provides that the assets of a pension plan that are to be allocated into jurisdictional portions include any alternative funding arrangement described in section 6 of the Agreement that exists in relation to the plan on the date of allocation. However, the pension legislation that governs the alternative funding arrangement can affect the characteristics of the alternative funding arrangement for the purposes of the asset allocation (for example, by affecting the value of the alternative funding arrangement as an asset of the pension plan).*

*This section also provides that the value of the benefits and other amounts payable under a pension plan, as well as the assets of the plan, will be determined as if the pension plan were wound up on the date of allocation. However, in situations other than a full pension plan wind up, a partial pension plan wind up or a withdrawal of an employer from a multi-employer pension plan, the values taken into account under the fourth level of priority will be determined on a going concern basis.*

**Example:**

*A multi-jurisdictional pension plan registered with the Régie des rentes is to be fully wound up. On the wind up date, the plan administrator holds a letter of credit in support of the plan's funding requirements, as permitted by Quebec's pension legislation.*

*Quebec's legislation specifies that if the administrator of a pension plan holds letters of credit on the date the plan winds up, the letters of credit must be called upon pay into the plan's pension fund an amount equal to the lesser of:*

- *the amount by which the plan's liabilities exceed the plan's assets on the wind up; or*
- *the full amount of the letters of credit held by the plan administrator.*

*In this example, as of the plan's wind up date, the plan's total wind up liabilities are 1000, the plan administrator holds a letter of credit under which a maximum amount of 135 is payable into the plan's pension fund in the event of the plan's wind up and the plan's pension fund has other assets with a total market value of 880. For the purposes of the allocation of the plan's assets into jurisdictional portions, the allocation will proceed on the basis that the letter of credit will provide an amount equal to 120 to the plan's pension fund (bringing the pension plan to a fully funded status, but no more), based on the requirements of Quebec's legislation respecting letters of credit.*

**Text from Agreement:****SECTION 15****REDUCTION METHOD****Reduction method**

**15.** (1) Subject to subsection (2), to the extent that a value or amount referred to in subsection (3) or (4) of section 13 relates to benefits arising from the application of a provision of a pension plan or of pension legislation that came into effect less than five years before the date of allocation, such value or amount shall, for the purposes of subsection (3) or (4) of section 13, be reduced:

- (a) by 100%, if the period from the date that the provision of the pension plan or pension legislation came into effect to the date of allocation is less than one year;
- (b) by 80%, if the period is one year or more, but less than two years;
- (c) by 60%, if the period is two years or more, but less than three years;
- (d) by 40%, if the period is three years or more, but less than four years; and
- (e) by 20%, if the period is four years or more, but less than five years.

**Exception to reduction method**

(2) The major authority for a pension plan may permit the assets of the plan to be allocated into the portions described in subsection (2) of section 11 without applying the requirements of subsection (1) if a Fellow of the Canadian Institute of Actuaries certifies that the liabilities of the plan that are related to the plan assets to be allocated into the portions described in subsection (2) of section 11 do not exceed those assets on a solvency basis.

**Explanatory Notes:**

*If a jurisdiction amends its pension legislation to introduce a new legislated benefit that must be funded or requires the funding of a benefit where no such funding requirement existed beforehand, or if a plan improves its benefits and those benefits are required to be funded under the pension legislation that applies to those benefits, this section sets out a five-year transition period to transfer the liabilities for these benefits from the fourth level of priority in the asset allocation to the second or third level of priority (depending on whether the liability qualifies as a “core liability” or as “other liabilities whose funding is required”).*

**Example:**

*A pension plan has members employed in Ontario and Quebec. Ontario amends its pension legislation to require the establishment and funding of an additional benefit effective December 31, 2010. The liabilities for the additional benefit do not qualify as a core liability for the purposes of an asset allocation under the Agreement.*

*On October 31, 2013, the pension plan winds up. On the wind up date, the value of the plan's liabilities associated with the new Ontario benefit is equal to 1000. In this example, the wind up occurs after the second anniversary, but prior to the third anniversary, of the effective date of the requirement to establish the new Ontario benefit. As a result, 40% (or 400) of the value of the plan's liabilities associated with the new Ontario benefit would be included in the third level of priority for the asset allocation. The remaining 60% (or 600) of the value of the plan's liabilities associated with the new Ontario benefit would be included in the fourth level of priority for the asset allocation.*



**Text from Agreement:**

**SECTION 16**

**INSUFFICIENCY OF ASSETS**

**Insufficiency of assets**

**16.** If, at one of the levels of priority of allocation established by section 13, the assets of a pension plan that have yet to be allocated to a portion described in subsection (2) of section 11 are less than the total value of the benefits and other amounts that rank equally in that level of priority of allocation, the available plan assets shall be allocated to the portions pro rata to the total value of the benefits and other amounts that rank equally in that level of priority of allocation.

**Explanatory Notes:**

*This section sets out how the assets of a pension plan will be allocated when those assets are insufficient to fully cover the value of the liabilities and other amounts related to a particular level of priority.*

**Examples:**

*Please see the examples provided in the explanatory notes for section 13 of the Agreement, some of which illustrate the allocation of assets when a pension plan's assets are insufficient to fully cover the value of the liabilities and other amounts related to a particular level of priority.*

**Text from Agreement:****SECTION 17****USE OF ASSETS FOLLOWING ALLOCATION****Use of allocated assets**

17. (1) Where an asset allocation for a pension plan is made under this Part in any situation other than that described in clause (c), (d) or (e) of section 10, each portion of the assets of the plan allocated in accordance with sections 11 to 16 shall be utilized in conformity with the pension legislation applicable to the benefits and other amounts related to that portion.

**Use of allocated assets for certain asset allocations**

(2) Where an asset allocation for a pension plan is made under this Part in a situation described in clause (c), (d) or (e) of section 10, each portion of the assets of the plan allocated in accordance with sections 11 to 16 shall be utilized, in conformity with the pension legislation applicable to the benefits and other amounts related to that portion, to satisfy payment of those benefits and other amounts arising from the wind up of the plan or the withdrawal of the employer, as the case may be. In addition, any remaining assets related to that portion shall be distributed in accordance with that pension legislation, if so required under that legislation. No assets of the plan allocated to one portion shall be utilized to satisfy payment of the benefits and other amounts related to another portion on the wind up of the plan or the withdrawal of the employer, as the case may be.

**Use of remaining allocated assets**

(3) Where a situation described in clause (c) or (d) of section 10 occurs and the assets of a pension plan that have been allocated to a portion in accordance with sections 11 to 16 have been utilized to fully satisfy payment of the benefits and other amounts related to that portion that arise from the partial wind up of the plan or the withdrawal of the employer, as the case may be, and any other assets related to that portion have been distributed as required by the pension legislation applicable to the benefits and other amounts related to that portion, any remaining assets related to that portion shall remain in the pension fund of the plan and be commingled with the other assets therein.

**Explanatory Notes:**

*This section sets out how the assets of a pension plan that have been allocated among jurisdictional portions in accordance with Part IV of the Agreement would be used subsequent to the allocation. Once the allocations have been made, the assets of the portion allocated to particular jurisdiction will be used in the manner set out in the pension legislation of that jurisdiction.*

**PART V**  
**RELATIONS BETWEEN AUTHORITIES**

**Text from Agreement:**

**SECTION 18**  
**COOPERATION**

**Reciprocal obligations**

**18.** The pension supervisory authorities that are subject to this Agreement shall:

- (a) provide to each other any information required for the application of this Agreement or pension legislation, and if requested, may provide other information which is reasonable in the circumstances;
- (b) assist each other in any matter concerning the application of this Agreement or pension legislation as is reasonable in the circumstances, particularly with respect to subsection (7) of section 4, and may act as agent for each other;
- (c) upon the request of such an authority, transmit to that authority any information on steps taken for the application of this Agreement and amendments to pension legislation, to the extent that such amendments affect the application of this Agreement;
- (d) notify each other of any difficulty encountered in the interpretation or in the application of this Agreement or pension legislation; and
- (e) seek an amicable resolution to any dispute that arises between them with respect to the interpretation of this Agreement.

**Explanatory Notes:**

*This section requires that pension supervisory authorities cooperate with each other for the purposes of administering the Agreement. This includes sharing information, providing assistance and seeking amicable resolutions to disputes between the authorities.*

**PART VI**  
**EXECUTION AND COMING INTO FORCE OF AGREEMENT**

**Text from Agreement:**

**SECTION 19**  
**EXECUTION AND COMING INTO FORCE**

**Effective date**

**19.** This Agreement shall come into force:

- (a) on ***[insert the date agreed to for the coming into force of this Agreement under this clause]***, in respect of each government on behalf of which this Agreement has been signed on or before that date; and
- (b) on the date unanimously agreed to by all governments that are party to this Agreement in respect of a government on behalf of which this Agreement is signed after ***[insert the date agreed to for the coming into force of this Agreement under clause (a)]***.

**Explanatory Notes:**

*This section establishes when the Agreement will come into force for the jurisdictions whose governments form the initial parties to the Agreement, and when it will come into force for jurisdictions whose governments become party to the Agreement after the initial effective date.*

**Example:**

*If the initial effective date of the Agreement under clause 19(a) of the Agreement is set as January 1, 2011, the Agreement would come into force as of January 1, 2011, for those jurisdictions whose governments have signed on to the Agreement on or by that date.*

*Therefore, any jurisdiction whose government has not signed on to the Agreement as of January 1, 2011, would be subject to section 19(b) with respect to when that jurisdiction would become subject to the Agreement.*

*For example, suppose the governments of the following jurisdictions sign on to the Agreement in relation to the following dates:*

<b>Jurisdiction</b>	<b>Date Agreement signed</b>	<b>Effective Date</b>
Quebec	January 15, 2010	January 1, 2011
Ontario	January 15, 2010	January 1, 2011
British Columbia	January 15, 2010	January 1, 2011
Canada	June 1, 2010	January 1, 2011
Nova Scotia	September 1, 2010	January 1, 2011
Newfoundland and Labrador	January 1, 2011	January 1, 2011
Saskatchewan	January 2, 2011	June 1, 2011 (by consensus)
Alberta	May 1, 2011	September 1, 2011 (by consensus)
New Brunswick	September 1, 2011	January 1, 2012 (by consensus)
Manitoba	January 1, 2014	June 1, 2014 (by consensus)

*As of January 1, 2011, the Agreement would be effective for Quebec, Ontario, British Columbia, Canada, Nova Scotia and Newfoundland and Labrador (the “original signatories”) in accordance with clause 19(a) of the Agreement.*

- The government of Newfoundland and Labrador signs on to the Agreement on the day that the Agreement comes into effect, and is therefore considered an original signatory in accordance with clause 19(a).*

*Saskatchewan, whose government signs on to the Agreement on January 2, 2011, is subject to clause 19(b) of the Agreement and must reach consensus with the original signatories as to when the Agreement becomes effective for its jurisdiction. Assume for the purposes of this example that the Agreement becomes effective for Saskatchewan on June 1, 2011, as determined by consensus between the original signatories and Saskatchewan.*

*Alberta, whose government signs on to the Agreement on May 1, 2011, is subject to clause 19(b) of the Agreement and must reach consensus with the original signatories and Saskatchewan as to when the Agreement becomes effective for its jurisdiction. Assume for the purposes of this example that the Agreement becomes effective for Alberta on September 1, 2011.*

- Although the Agreement would not be in force for Saskatchewan until June 1, 2011, its government is a signatory on the date Alberta’s government signs on to the Agreement, and its consent must also be obtained as to the Agreement’s effective date for Alberta.*

*New Brunswick, whose government signs on to the Agreement on September 1, 2011, is subject to clause 19(b) and must reach consensus with the original signatories,*

*Saskatchewan and Alberta as to when the Agreement becomes effective for its jurisdiction. Assume for the purposes of this example that the Agreement becomes effective for New Brunswick on January 1, 2012.*

*Finally, on January 1, 2014, Manitoba's government signs on to the Agreement, and in accordance with clause 19(b), must reach consensus with the original signatories, Saskatchewan, Alberta and New Brunswick as to when the Agreement becomes effective for its jurisdiction. Assume for the purposes of this example that the Agreement becomes effective for Manitoba on June 1, 2014.*

**Text from Agreement:**

**SECTION 20**

**ADDITIONAL PARTIES**

**Unanimous consent**

**20.** (1) A government may become party to this Agreement with the unanimous consent of the governments that are party to it.

**Effects**

(2) This Agreement shall enure to the benefit of and be binding upon a government that becomes a party to this Agreement, the government's jurisdiction and the jurisdiction's pension supervisory authority as of the date referred to, as the case may be, in clause (a) or (b) of section 19.

**Explanatory Notes:**

*This section provides a mechanism for the government of a jurisdiction to enter into the Agreement after the initial effective date of the Agreement.*

**Text from Agreement:****SECTION 21****WITHDRAWAL****Written notice**

**21.** (1) A government that is party to this Agreement may withdraw from this Agreement by giving written notice to all other governments that are party to this Agreement. Such notice shall be signed by a person authorized by the laws of the withdrawing government's jurisdiction to sign this Agreement.

**Waiting period**

(2) The withdrawal shall take effect on the first day of the month following expiry of a period of three years following the date on which the notice was transmitted. The withdrawal shall affect only the withdrawing government, and the Agreement shall remain in force for all other governments.

**Minor authority**

(3) Where, upon expiry of the three-year period referred to in subsection (2), the pension supervisory authority for the withdrawing government's jurisdiction acts as a minor authority with respect to a pension plan, the major authority for the plan shall provide, upon request, that minor authority with copies of all relevant records, documents and other information concerning the plan in the major authority's possession.

**Major authority**

(4) Where, upon expiry of the three-year period referred to in subsection (2), the pension supervisory authority for the withdrawing government's jurisdiction acts as the major authority for a pension plan, such authority shall:

- (a) determine which pension supervisory authority, if any, shall become the new major authority for the plan in accordance with section 3 as of the effective date of the withdrawal; and
- (b) provide the new major authority for the plan referred to in clause (a), as soon as possible after such authority assumes its functions, with all relevant records, documents and other information in its possession concerning the plan.

**Notice by major authority**

(5) The pension supervisory authority that becomes a pension plan's new major authority in accordance with subsection (4) shall, as soon as possible after assuming its functions, inform the plan administrator and each of the plan's minor authorities of the date on which it assumed the functions of major authority.



**Notice by plan administrator**

(6) The administrator of a pension plan that receives from the plan's new major authority notice of the information provided for in subsection (5) shall transmit such information:

- (a) to each employer that is party to the plan and any collective bargaining agent that represents any person who has rights or benefits under the plan within 90 days after such notice; and
- (b) to any person who has rights or benefits under the plan who is entitled to receive an annual statement of the person's benefits under the plan, no later than the expiry of the period for providing such persons with their next annual statements of benefits.

**Decisions and recourse**

(7) Despite sections 4 and 6, where a pension supervisory authority becomes a pension plan's new major authority in accordance with subsection (4):

- (a) all matters related to the plan that are pending before a prior major authority on the day preceding the new major authority's assumption of its functions under this Agreement shall be continued before that prior major authority;
- (b) all matters related to the plan that concern a decision, order, direction or approval proposed or made by a prior major authority and pending before any administrative body or court on the day preceding the new major authority's assumption of its functions under this Agreement shall be continued before such body or court;
- (c) for every matter in respect of which the prior major authority referred to in clause (a) or the administrative body or court referred to in clause (b) has proposed or made a decision, order, direction or approval to which the pension legislation or other legislation applying on the day preceding the new major authority's assumption of its functions under this Agreement provides a right of recourse:
  - (i) such right shall be maintained so long as the period provided for exercising that right has not expired; and
  - (ii) such recourse may be brought before the administrative body or court provided for by the legislation giving entitlement thereto;
- (d) for any matter related to the plan not described in clauses (a) to (c) that occurred before the new major authority's assumption of its functions under this Agreement and that related to the provisions of the pension legislation

of a prior major authority's jurisdiction in respect of a matter referred to in Schedule B:

- (i) the prior major authority may, even after it loses its status as major authority for the plan, conduct an examination, investigation or inquiry into the matter in accordance with the pension legislation of the prior major authority's jurisdiction to determine whether compliance with that legislation was met, and in such case, the matter shall remain subject to that prior major authority; and
  - (ii) where the matter constitutes an offence under the pension legislation of the prior major authority's jurisdiction, the offence may be prosecuted by the competent authority in that jurisdiction, and in such case, the matter shall remain subject to that prior major authority; and
- (e) all matters referred to in clauses (a) to (d) shall remain subject to the pension legislation or other legislation that applied to such matters on the day preceding the new major authority's assumption of its functions under this Agreement.

**Explanatory Notes:**

*After a jurisdiction's government has entered into the Agreement, it may determine that it no longer wishes to participate in the Agreement. This section establishes the requirements and timeframes for a government to withdraw its jurisdiction from the Agreement.*

**Text from Agreement:**

**SECTION 22**

**AMENDMENT**

**Unanimous consent**

**22.** This Agreement may be amended with the unanimous written consent of the governments that are party to this Agreement.

**Explanatory Notes:**

*This section establishes the level of consent required to amend the Agreement.*

**Text from Agreement:**

**SECTION 23**

**COUNTERPARTS**

**Execution in counterparts**

**23.** This Agreement or any amendment to this Agreement may be executed in counterparts.

**Explanatory Notes:**

*This section establishes that each government that enters into the Agreement may do so by having a governmental representative sign an individual copy of the Agreement, even if it is not the same copy that has been signed by the other signatories of the Agreement.*

**Text from Agreement:**

***SECTION 24***

***EXECUTION IN ENGLISH AND IN FRENCH***

**Authentic texts**

**24.** This Agreement and any amendment to this Agreement shall be executed in the English and French languages, each text being equally authoritative.

**Explanatory Notes:**

*This section sets out the language requirements for the purposes of the Agreement and any amendment to the Agreement.*

**PART VII**  
**IMPLEMENTATION AND TRANSITIONAL PROVISIONS**

**Text from Agreement:**

**SECTION 25**

**REPLACEMENT**

**Prior agreements**

**25.** On the date referred to in clause (a) or (b) of section 19, as the case may be, this Agreement replaces the agreement entitled “Memorandum of Reciprocal Agreement” and any similar agreement respecting the application of pension legislation to pension plans made between the governments that are party to this Agreement or between the departments or agencies of such governments, to the extent that such plans are subject to this Agreement.

**Explanatory Notes:**

*This section establishes when and how the Agreement replaces the existing Memorandum of Reciprocal Agreement and any existing federal-provincial bilateral agreements respecting the regulation of multi-jurisdictional pension plans, for the jurisdictions whose governments have entered into the Agreement.*

**Text from Agreement:**

**SECTION 26**

**TRANSITION**

**Preliminary measure**

**26.** (1) Where this Agreement comes into force on a date set out under section 19 and on that date a pension plan to which this Agreement would apply is registered with a pension supervisory authority that was not already the major authority for the plan immediately before that date:

- (a) if the plan is registered with only one pension supervisory authority and that authority is subject to this Agreement on that date, that authority shall become the major authority for the plan as of that date;
- (b) if the plan is registered with more than one pension supervisory authority and each of those authorities is subject to this Agreement on that date, the major authority for the plan shall be, of those authorities, the authority of the jurisdiction with the plurality of active members of the plan, as determined in accordance with subsection (3) of section 3 and considering only those jurisdictions whose pension legislation would, if this Agreement and any other agreement respecting the supervision of pension plans did not exist, require the plan to be registered with the pension supervisory authority of that jurisdiction; and
- (c) if the plan is registered with more than one pension supervisory authority and not all of those authorities are subject to this Agreement on that date, this Agreement shall not apply to the plan until such time as all of the authorities with which the plan is registered are subject to this Agreement, at which time the requirements of clause (b) shall apply to the plan.

**Equal number of active members**

(2) Where the major authority for a pension plan cannot be determined by applying clause (b) of subsection (1) because two or more jurisdictions have authority over an equal number, greater than zero, of active members of the plan, the major authority for the plan shall be, of those jurisdictions, the authority whose main office is in closest proximity to the main office of the administrator of the plan. For the purposes of this subsection:

- (a) the main office of a pension supervisory authority is the office from which the authority conducts most of its supervisory activities; and

- (b) the main office of the pension plan administrator is the office from which the plan administrator described in the text of the pension plan conducts most of the plan's administration.

**Notice by major authority**

(3) The pension supervisory authority that becomes a pension plan's major authority in accordance with this section shall, as soon as possible after assuming its functions, inform the plan administrator and each of the plan's minor authorities of the date on which it assumed the functions of major authority.

**Notice by plan administrator**

(4) The administrator of a pension plan that receives from the plan's major authority notice of the information provided for in subsection (3) shall transmit such information:

- (a) to each employer that is party to the plan and any collective bargaining agent that represents any person who has rights or benefits under the plan within 90 days after such notice; and
- (b) to any person who has rights or benefits under the plan who is entitled to receive an annual statement of the person's benefits under the plan, no later than the expiry of the period for providing such persons with their next annual statements of benefits.

**Decisions and recourse**

(5) Despite sections 4 and 6, where a pension supervisory authority becomes a pension plan's major authority in accordance with this section:

- (a) all matters related to the plan that are pending before a pension supervisory authority on the day preceding the major authority's assumption of its functions under this Agreement shall be continued before that pension supervisory authority;
- (b) all matters related to the plan that concern a decision, order, direction or approval proposed or made by a pension supervisory authority and pending before any administrative body or court on the day preceding the major authority's assumption of its functions under this Agreement shall be continued before such body or court;
- (c) for every matter in respect of which the pension supervisory authority referred to in clause (a) or the administrative body or court referred to in clause (b) has proposed or made a decision, order, direction or approval to which the pension legislation or other legislation applying on the day preceding the major authority's assumption of its functions under this Agreement provides a right of recourse:



- (i) such right shall be maintained so long as the period provided for exercising that right has not expired; and
  - (ii) such recourse may be brought before the administrative body or court provided for by the legislation giving entitlement thereto;
- (d) for any matter related to the plan not described in clauses (a) to (c) that occurred before the major authority's assumption of its functions under this Agreement and that related to the provisions of the pension legislation of a pension supervisory authority's jurisdiction in respect of a matter referred to in Schedule B:
- (i) the pension supervisory authority may, even after the major authority assumes its functions under this Agreement for the plan, conduct an examination, investigation or inquiry into the matter in accordance with the pension legislation of that authority's jurisdiction to determine whether compliance with that legislation was met, and in such case, the matter shall remain subject to that pension supervisory authority; and
  - (ii) where the matter constitutes an offence under the pension legislation of the pension supervisory authority's jurisdiction, the offence may be prosecuted by the competent authority in that jurisdiction, and in such case, the matter shall remain subject to that pension supervisory authority; and
- (e) all matters referred to in clauses (a) to (d) shall remain subject to the pension legislation or other legislation that applied to such matters on the day preceding the major authority's assumption of its functions under this Agreement.

In witness whereof the undersigned do hereby execute this Agreement:

FOR THE GOVERNMENT OF [JURISDICTION NAME]

Date

Minister of [Ministry Name]

**Explanatory Notes:**

*This section sets out transitional requirements where the Agreement first comes into force in relation to a pension plan, such as how the major authority for the plan will be determined, notice requirements and the status of matters pending before the Agreement takes effect for the plan.*

**Examples:**

- 1) *Ontario and Quebec become subject to the Agreement on January 1, 2011. A pension plan registered immediately before that date with the Financial Services Commission of Ontario (“FSCO”) has active members employed in both Ontario and Quebec.*

*FSCO will become the major authority for the plan under the Agreement on January 1, 2011. As soon as possible after that date, FSCO will notify the administrator of the plan and the Régie des rentes du Québec (“Régie”) that it (FSCO) became the major authority for the plan under the Agreement effective January 1, 2011. The plan administrator must then provide this information to any employer participating in the plan and any collective bargaining agent for plan members within 90 days of receiving FSCO’s notice. The plan administrator must also provide this information to any person entitled to receive an annual statement of benefits from the plan by the time that the next annual statement of benefits is required to be provided (for example, under Ontario’s pension legislation, such statements are required to be provided to active plan members within 6 months after the plan fiscal year end).*

- 2) *Ontario becomes subject to the Agreement on January 1, 2011, and Saskatchewan becomes subject to the agreement on June 1, 2011. A pension plan registered with FSCO throughout this period only has active members employed in both Ontario and Saskatchewan.*

*Section 2(1) of the Agreement provides that the Agreement only applies to a pension plan if the plan would be subject to registration with a pension supervisory authority under the pension legislation of more than one jurisdiction that is subject to the Agreement. Before June 1, 2011, only one jurisdiction related to this plan (i.e., Ontario) is subject to the Agreement. As such, the Agreement will not apply to this plan until June 1, 2011, at which time FSCO will become the major authority for the plan under the Agreement.*

- 3) *Quebec and the federal jurisdiction become subject to the Agreement on January 1, 2011. A pension plan is registered immediately before that date with both the Régie and the federal Office of the Superintendent of Financial Institutions (“OSFI”). The plurality of active plan members are employed in the federal*

*jurisdiction. As a result, OSFI will become the major authority for the plan under the Agreement on January 1, 2011.*

*If, however, the federal jurisdiction in this example did not become subject to the Agreement until March 1, 2012, the plan would remain registered with both the Régie and OSFI until March 1, 2012, at which time OSFI would become the major authority for the plan under the Agreement.*

**SCHEDULE A  
PENSION LEGISLATION**

**Alberta**

1. *Employment Pension Plans Act*, R.S.A. 2000, c. E-8.

**British Columbia**

2. *Pension Benefits Standards Act*, R.S.B.C. 1996, c. 352.

**Manitoba**

3. *Pension Benefits Act*, R.S.M. 1987, c. P32.

**New Brunswick**

4. *Pension Benefits Act*, S.N.B. 1987, c. P-5.1.

**Newfoundland and Labrador**

5. *Pension Benefits Act, 1997*, S.N.L. 1996, c. P-4.01.

**Nova Scotia**

6. *Pension Benefits Act*, R.S.N.S. 1989, c. 340.

**Ontario**

7. *Pension Benefits Act*, R.S.O. 1990, c. P.8.

**Quebec**

8. *Supplemental Pension Plans Act*, R.S.Q., c. R-15.1.

**Saskatchewan**

9. *Pension Benefits Act, 1992*, S.S. 1992, c. P-6.001.

**Federal jurisdiction**

10. *Pension Benefits Standards Act, 1985*, R.S.C. 1985 (2nd supp.), c. 32.

**SCHEDULE B**  
**MATTERS COVERED BY INCORPORATED LEGISLATIVE PROVISIONS**

**SECTION 1**  
**MAJOR AUTHORITY'S PENSION LEGISLATION**

**Major authority's pension legislation**

1. The pension legislation applicable to a pension plan shall be the pension legislation of the jurisdiction of the major authority for the plan in the following areas of pension legislation:

**Registration of pension plans**

1. Legislative provisions respecting:
  - (a) the duty of the pension plan administrator to ensure that the plan complies with the applicable pension legislation;
  - (b) requirements that a pension plan be registered with the authority;
  - (c) prohibitions against administering a pension plan not registered with the authority;
  - (d) the pension plan registration process (including the filing of required forms and documents, the form in which such documents must be filed, the contents of documents and filing deadlines);
  - (e) whether registration of a plan is proof of compliance with the applicable pension legislation; and
  - (f) the authority's power to refuse or revoke the registration of a plan due to non-compliance with the applicable pension legislation.

**Registration of pension plan amendments**

2. Legislative provisions respecting:
  - (a) requirements that pension plan amendments, or amendments to prescribed pension plan documents, be registered with the authority;
  - (b) the amendment registration process (including the filing of required forms and documents, the form in which such documents must be filed, the contents of documents and filing deadlines);

- (c) whether registration of an amendment is proof of compliance with the applicable pension legislation;
- (d) the authority's power to refuse or revoke the registration of a plan amendment due to non-compliance with the pension legislation applicable to the plan under clause (a) of subsection (1) of section 6 of the Agreement;
- (e) the ability of the administrator to administer the amended plan if it does not comply with the applicable pension legislation; and
- (f) requirements for notice of registration of the amendment to be provided to active members or other persons, the form and content of the notice and deadlines for providing such notice.

**Pension plan administrators**

3. Legislative provisions respecting:

- (a) requirements that a pension plan be administered by an administrator;
- (b) who may be an administrator; and
- (c) the right of active members or other persons to establish an advisory committee to advise the administrator, and requirements respecting such an advisory committee.

**Pension plan administrators' duties**

4. Legislative provisions respecting:

- (a) requirements that the pension plan administrator or the trustee, custodian or holder of the pension fund:
  - (i) administer the pension plan or pension fund in accordance with the applicable pension legislation and the plan terms;
  - (ii) stand in a fiduciary relationship to active members or other persons;
  - (iii) hold the pension fund in trust for the active members or other persons;
  - (iv) act honestly, in good faith and in the best interests of the active members or other persons;

- (v) exercise the care, diligence and skill of a prudent person;
  - (vi) invest the pension fund in accordance with the applicable pension legislation, the pension plan's written investment policies, in the best interests of the active members or other persons or in a reasonable and prudent manner; and
  - (vii) hold an annual or periodic meeting with the active members or other persons;
- (b) requirements that persons involved in the administration of a pension plan or pension fund:
- (i) employ all knowledge and skill they possess by reason of their business or profession;
  - (ii) familiarize themselves with their fiduciary duties and obligations; and
  - (iii) possess the skills, capability and dedication required to fulfill their responsibilities and seek advice from qualified advisors where appropriate;
- (c) conflict of interest requirements for persons involved in the administration of a pension plan or pension fund;
- (d) requirements for the selection, use and supervision of the administrator's agents or advisors, and requirements for such agents or advisors;
- (e) requirements that the employer or trustee provide information to the administrator; and
- (f) requirements respecting to the payment of expenses related to the pension plan.

**Pension plan records**

5. Legislative provisions respecting:

- (a) how long any person must retain information related to the pension plan; and

- (b) requests by the plan administrator for information necessary for the administration of the pension plan.

**Funding of ongoing pension plans (not in the case of full or partial plan wind up)**

6. Legislative provisions respecting:

- (a) requirements for contributions made to the pension fund (including the type or form of contributions, the manner in which they must be made and deadlines for making them);
- (b) minimum plan funding and solvency levels (including plan funding and solvency levels related to pension plan amendments and the use of plan assets for the funding of plan amendments);
- (c) the ability to take contribution holidays;
- (d) requirements for actuarial valuation reports to be filed with the authority in respect of pension plans (including the form and content of such reports, filing deadlines and actuarial standards to be applied in preparing such reports);
- (e) requirements for refunds of contributions to employers, active members or other persons;
- (f) restrictions on the amount of the commuted value of a person's benefit entitlements under a pension plan that can be transferred out of the pension fund of the plan where the plan is not fully funded on a solvency or going concern basis;
- (g) who may be the trustee, custodian or holder of the pension fund; and
- (h) requirements for the provision of information between administrators and the trustees, custodians or holders of pension funds with respect to contributions, and for notice to the authority of contributions not remitted when due.

**Pension fund investments**

7. Legislative provisions respecting:

- (a) requirements for the investment of the pension fund (including limitations on investments and requirements that pension fund assets to be held in the name of the pension plan);



- (b) requirements that the administrator prepare a written investment policy, requirements for such a policy (including the form and content of the policy, whether it must be filed with the authority and the deadline for filing) and requirements regarding to whom such a policy must be provided; and
- (c) requirements in situations where active members or other persons direct the investment of their contributions (including the minimum number and type of investment options offered, the education and advice available to active members or who may provide the advice).

**Pension fund assets**

- 8. Legislative provisions respecting:
  - (a) requirements for pension fund assets to be held by specified fund holders under a specified type of agreement;
  - (b) requirements for contributions to be remitted to the pension fund;
  - (c) requirements that the pension fund be held separate and apart from the employer's assets and deeming the pension fund to be held in trust for the active members or other persons;
  - (d) an administrator's lien and charge on the employer's assets equal to the amounts deemed held in trust; and
  - (e) the administrator's duty to take immediate action (including court proceedings) to obtain outstanding contributions.

**Provision of information**

- 9. Legislative provisions respecting:
  - (a) requirements for documents and information to be filed by the administrator or any other person with the authority, including:
    - (i) periodic information returns;
    - (ii) actuarial information for defined benefit plans;
    - (iii) financial statements (including audited financial statements); and
    - (iv) the form and content of the documents and information, who must prepare them and filing deadlines;

- (b) requirements for the following documents and information to be provided by the administrator, including the form and content of the documents and information, who must prepare them and deadlines for providing them:
  - (i) pension plan summaries for active members or employees entitled to join the plan; and
  - (ii) annual or periodic statements for active members or other persons; and
- (c) requirements for the inspection of pension plan documents in the possession of the administrator, authority or other persons (including who is entitled to inspect the documents and information, how often, where and at what cost).

**Plan membership**

10. Legislative provisions respecting:

- (a) pension plans being for one or more classes of employees; and
- (b) the ability of the employer to establish separate plans for full-time and part-time employees.

**Appointment of pension plan administrator**

11. Legislative provisions respecting:

- (a) the ability of the authority to appoint itself or another person as administrator of a pension plan and rescind the appointment; and
- (b) the powers of an appointed administrator.

**SECTION 2**

**MAJOR AUTHORITY'S POWERS**

**Major authority's powers**

2. Where the pension legislation of the major authority's jurisdiction applies to a pension plan in accordance with section 1 of this Schedule, the following areas of the pension legislation of the major authority's jurisdiction shall, for the purposes of the plan and all jurisdictions that are subject to this Agreement in respect of the plan, also apply in respect of the application of the pension legislation described in section 1 of this Schedule:

**Powers of examination, investigation or inquiry**

1. All powers of examination, investigation or inquiry given to the major authority.

**Orders, directions, approvals or decisions**

2. The issuance of, or proposal to issue, orders, directions, approvals or decisions by the major authority, and any modification as may be made to such an order, direction, approval or decision by the authority, an administrative body or a court.

**Reconsideration or review**

3. The rights of the plan or a person affected by an order, direction, approval or decision of the major authority, an administrative body or a court to have the order, direction, approval or decision reconsidered or reviewed by the authority, an administrative body or a court.

**Offences and penalties**

4. The offences and penalties that may be applied where the plan or a person is found to have contravened the terms of the applicable pension legislation.

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