

Canadian
Association of
Pension
Supervisory
Authorities

CAPSA

Proposed Agreement Respecting Multi- Jurisdictional Pension Plans

**Consultation Document prepared by the
Canadian Association of Pension Supervisory Authorities**

October 21, 2008



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Dear Pension Stakeholder:

RE: Proposed Agreement Respecting Multi-Jurisdictional Pension Plans

On behalf of the Canadian Association of Pension Supervisory Authorities (CAPSA), I am pleased to announce the release of a proposed *Agreement Respecting Multi-Jurisdictional Pension Plans* (the "proposed Agreement") for review and comment by pension stakeholders. The proposed Agreement is available in electronic form on the CAPSA website at www.capsa-acor.org. Paper copies are available upon request from the CAPSA Secretariat.

CAPSA is an inter-jurisdictional association of pension regulators whose goal is to promote the harmonization and coordination of the pension regulatory system in Canada. In achieving this goal, CAPSA recognizes that there is an immediate need for a new regulatory framework for multi-jurisdictional pension plans that is in line with the current environment in which such plans operate. CAPSA has therefore developed the proposed Agreement which sets out a new, clear framework for the administration and regulation of multi-jurisdictional pension plans for consultation with pension stakeholders.

The proposed Agreement addresses a number of complex issues in the regulation of multi-jurisdictional pension plans, including clarifying which jurisdiction's legislation applies to specified matters covered under pension regulation. The proposed Agreement is intended to provide a clear framework for the regulation of multi-jurisdictional pension plans by applying the rules of the jurisdiction where the plan is registered for matters affecting the entire plan, and the rules of the jurisdiction in which plan members are employed for matters affecting their entitlements. The proposed Agreement also addresses matters not contemplated in pension standards legislation, such as the allocation of assets among jurisdictions on plan wind up or asset transfer.

The consultation package consists of the following four parts:

- Part I: Rationale for the development of a new agreement respecting multi-jurisdictional pension plans.
- Part II: Highlights of key provisions in the proposed Agreement.
- Part III: The proposed Agreement respecting multi-jurisdictional pension plans.

Part IV: A commentary guide for the proposed Agreement, which provides additional explanations and examples to aid in the understanding and application of the proposed Agreement.

Please note that the proposed Agreement should not be construed as the official position of any provincial or federal government or agency. CAPSA is very interested in receiving the views of stakeholders prior to finalizing the proposed Agreement, which would then be submitted to governments for consideration. If adopted, the agreement would provide a new framework for the regulation of multi-jurisdictional pension plans in Canada.

CAPSA is interested in receiving feedback from stakeholders on the proposed Agreement, in particular its practical application, prior to its submission to governments. Written submissions should be forwarded to:

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Electronic copies of submissions would be preferred. We look forward to receiving your submissions by **January 30, 2009**. Please note that CAPSA will publicly release all of the submissions received in this consultation process.

In addition, In-person consultation sessions will be held in various locations across Canada in November and December 2008.

A separate but parallel consultation on the proposed Agreement will be conducted in Quebec by the Régie des rentes du Québec.

Sincerely,

David Wild
Chair, CAPSA

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Part I:

RATIONALE FOR A NEW AGREEMENT RESPECTING MULTI-JURISDICTIONAL PENSION PLANS

Background

Multi-jurisdictional pension plans (MJPPs) are employment-based pension plans with members in more than one jurisdiction, whether federal or provincial. Often these plans are sponsored by larger employers and unions who operate in several jurisdictions.

In Canada, the federal-provincial division of legislative powers is set out in the *Constitution Act, 1867* (originally the *British North America Act, 1867*), which defines the scope of the power of the federal government and the powers of each individual provincial government. 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. MJPPs can fall within both provincial and federal regulators' jurisdictions.

According to Statistics Canada data, as of January 1, 2006, there were approximately 3000 MJPPs operating in Canada, which comprise approximately 20 percent of all pension plans registered across the country. Although MJPPs only represent one-fifth of registered pension plans in Canada, approximately 40 percent of pension plan members (approximately 2.3 million members) are members of MJPPs. MJPPs tend to be larger and more complex than other pension plans.

Under a longstanding Memorandum of Reciprocal Agreement (MRA) between the provinces, as well as bilateral federal-provincial agreements, a MJPP is registered in the jurisdiction with the plurality of employed members. In the absence of an inter-governmental agreement, MJPPs 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 MRA requires that the regulatory authority for the jurisdiction with the plurality of actively employed plan members (the major authority) exercise both its own statutory powers in respect of the plan and the statutory powers of the authorities for each other jurisdiction where plan members are employed.

The MRA was originally signed in 1968. Legislative provisions respecting pension plans have evolved considerably since then and, while the principles

underlying pension legislation have remained substantially similar across Canadian jurisdictions, differences in the details of legislative and regulatory provisions have emerged. As a result, it has become increasingly difficult and impractical to apply the framework of the existing MRA, principally because of the challenges in applying the rules of multiple jurisdictions to matters affecting the plan as a whole (e.g., in respect of funding).

CAPSA's goal is to promote the harmonization and coordination of the pension regulatory system in Canada. In achieving this goal, CAPSA recognizes that there is an immediate need for a new regulatory framework for MJPPs that is in line with the current environment in which such plans operate. CAPSA has therefore developed the proposed Agreement which sets out a new, clear framework for the administration and regulation of MJPPs for consultation with pension stakeholders.

The Need for a New Agreement

The current MRA was intended as an administrative arrangement, under which the major authority would administer and enforce the legislation of each jurisdiction where MJPP members are employed. In the current environment under which pension plans operate, the MRA does not provide the clarity required to effectively administer and regulate MJPPs.

The MRA is silent on how to address issues resulting from the application of conflicting legislative provisions of multiple jurisdictions. For example, the MRA does not set out rules that are to be followed when allocating assets in the event of a plan termination or asset transfer. Since the rules for allocating pension plan assets can differ across jurisdictions, it is important to clarify how assets should be allocated when a multi-jurisdictional pension plan winds up or its assets are transferred.

There have been previous attempts to update and redraft the framework for regulating MJPPs. For example, in the 1990s, an attempt was made at drafting a revised agreement based on the "passport" approach, whereby plans would be registered with the major authority and the legislation of the major authority would generally govern the entire plan. However, the approach raised concerns that individual plan members' pension entitlements would be governed by the legislation of a jurisdiction other than their own.

CAPSA has now completed a draft of a proposed Agreement respecting MJPPs, which addresses the deficiencies of the current MRA noted above. The proposed Agreement contains provisions which address areas which the existing MRA does not address and, in a number of areas, introduces a new common set of rules that would apply to MJPPs. If adopted by governments across Canada, the proposed Agreement would provide a clear regulatory framework for the administration and regulation of MJPPs. Legislative amendments may be

required in some jurisdictions before their governments could enter into the new agreement.

Please note that this document has been prepared for discussion purposes and does not reflect the official position of any provincial or federal government or agency. CAPSA is interested in receiving feedback from stakeholders on the proposed Agreement, in particular its practical application, prior to its submission to governments.

Part II:

KEY PROVISIONS OF THE PROPOSED AGREEMENT RESPECTING MULTI-JURISDICTIONAL PENSION PLANS

As noted in Part I of this paper, the proposed Agreement addresses areas not addressed in the existing MRA. In particular, it establishes an explicit framework for determining how the laws of each jurisdiction with members in a MJPP apply to the plan. The Agreement itself also contains certain rules that apply to MJPPs, a number of which do not currently exist in any provincial or federal pension legislation. This section highlights a number of key provisions contained in the proposed Agreement.

1. *Applicable Legislation – Plan Matters Versus Entitlement Matters*

Although pension legislation is substantially similar across Canada, some differences exist in the details of legislative and regulatory provisions across jurisdictions. As such, it may be difficult to simultaneously apply the provisions of more than one jurisdiction to a MJPP. In order to address this, the proposed Agreement applies only one set of rules to matters that affect the MJPP as a whole – the rules of the jurisdiction of the major authority. However, the approach also acknowledges the legitimate authority of governments to establish laws that apply to the entitlements of their constituents. As such, the proposed Agreement requires that the legislation of the other jurisdictions with members in the MJPP (the minor authority jurisdictions) be enforced in respect of matters affecting the entitlements of their MJPP members.

Schedule B of the proposed Agreement sets out all matters for which the legislation of the major authority's jurisdiction would apply. For example, the rules respecting funding, investment and plan registration that are contained in the legislation of the jurisdiction of major authority would apply to the entire MJPP.

However, the major authority would apply the legislation of each minor authority jurisdiction with respect to all matters that are not contained in Schedule B in relation to members in those jurisdictions. These would include matters such as vesting, locking-in and surplus distribution in relation to members in those jurisdictions.

In addition, the funding rules of the major authority's jurisdiction would apply to the entire plan. However, where the legislation of a minor authority's jurisdiction requires that a particular benefit be funded, that benefit would be required to be funded in respect of plan members in that minor authority's jurisdiction, in a manner consistent with the funding rules of the major authority.

2. Major Authority and Its Role

The proposed Agreement establishes a major authority of a MJPP whose role is to supervise and regulate the pension plan on behalf of all minor authorities, in accordance with the proposed Agreement. This also includes the requirement to enforce certain rules specified in the Agreement that are not part of any jurisdiction's pension legislation.

According to the proposed Agreement, the major authority for a MJPP would be the regulatory authority for pension plans in the jurisdiction with the plurality of active plan membership. The Agreement also contains specific rules for changes in major authority, as well as notification requirements for regulatory authorities and plan administrators upon the determination and change of major authority.

3. Decision Making Process

The proposed Agreement contains provisions regarding decision making by regulatory authorities and recourse from such decisions. The proposed Agreement requires that the initial decision on any matter be made by the major authority in accordance with the procedural provisions set out in its legislation for such a decision.

If the decision relates to a matter that affects the plan as a whole (i.e., a matter that is listed in Schedule B of the proposed Agreement), any recourse sought from that decision would also be made in accordance with the avenues of recourse set out in the major authority's legislation.

If the decision relates to a matter that affects member entitlements (i.e. a matter that is not listed in Schedule B of the proposed Agreement), any recourse from the initial decision made by the major authority would be according to the legislation of the relevant minor authority's jurisdiction, as if the initial decision had been made by the relevant minor authority.

4. Final Location Method for Determination of Benefits

The proposed Agreement requires that the "final location" benefit calculation method be used to determine a member's benefit entitlements. Under this method, a member's entire benefit accrual is subject to the pension legislation of the jurisdiction in which the member is located at the time of the determination.

5. Allocation of Assets

Since the rules for allocating pension plan assets can differ across jurisdictions, it is important to clarify how assets should be allocated when a MJPP winds up or its assets are transferred. In order to achieve clarity on this matter, the proposed Agreement defines rules for the allocation of assets among jurisdictions with respect to a MJPP.

For example, in the event of a plan wind up, the assets of the plan would be allocated among jurisdictions in the following order of priority:

- i) The value of employee additional voluntary contributions; any employer/employee contributions under any defined contribution component of the plan; optional ancillary contributions paid under any flexible component of the plan; and any amounts that a person has elected to transfer into the pension fund.
- ii) The value of the “core liabilities” of the plan.¹
- iii) The value of all other benefits that are required to be funded by legislation on a solvency basis, not covered in core liabilities.
- iv) The value of all other benefits provided by the plan that are not required to be funded.
- v) Any remaining assets would be distributed among jurisdictions in proportion to the value of benefits covered under the first, second and third orders of priority above.

It is important to note that this methodology only stipulates the allocation of assets among jurisdictions. Once assets have been allocated using the approach described above, the distribution of the assets to individual members within each jurisdiction would be in accordance with the pension standards legislation of each jurisdiction.

¹ For active and deferred vested plan members, core liabilities would be the dollar amount of the lifetime benefits that are required to be funded on a solvency basis, calculated at the age at which all members can retire with an unreduced pension, including their related death benefits and post-retirement indexation. For pensioners, core liabilities would include all pensions in pay.

Part III:

PROPOSED AGREEMENT RESPECTING MULTI-JURISDICTIONAL PENSION PLANS

AGREEMENT RESPECTING MULTI-JURISDICTIONAL PENSION PLANS

RECITALS

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 signatories 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 signatories agree as follows:

PART I GENERAL PROVISIONS

SECTION 1.

DEFINITIONS & SCHEDULES

Definitions

(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 to the person 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.

SECTION 2.

APPLICATION

General application

(1) Subject to subsection (2) and section 27, this Agreement applies to any pension plan that is 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.

PART II MAJOR AUTHORITY

SECTION 3.

DETERMINATION OF THE MAJOR AUTHORITY

One major authority

(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 27, 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.

SECTION 4.

ROLE OF THE MAJOR AUTHORITY

Interpretation

(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 major authority's pension legislation.

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 bring about 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 major authority's pension legislation 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 minor authority's pension legislation 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.

SECTION 5.

LOSS OF MAJOR AUTHORITY STATUS

Loss of major authority status

(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.

PART III
APPLICABLE LAW

SECTION 6.

APPLICABLE LEGISLATION

Applicable pension legislation

(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, such funding shall be made in respect of that benefit, even if such funding would not be required 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, 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;

(c) subject to clause (d), 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 before the major authority assumed its duties in respect of the plan until such time as a new actuarial valuation report is filed in respect of the plan with the major authority that complies with the pension legislation of the major authority's jurisdiction; and

(d) when a pension supervisory authority becomes the major authority for a pension plan in accordance with this Agreement, if the pension legislation that applied before that authority became the major authority for the plan permitted the use of letters of credit or similar financial instruments to supplement, support or otherwise satisfy the funding requirements applicable to the plan under that legislation, but the pension legislation of the major authority does not permit the use of those letters of credit or similar financial instruments for the same purpose as that provided under the pension legislation that applied before that authority became the major authority for the plan, then:

(i) no later than thirty days before the authority becomes the major authority for the plan, an amount equal to the value of the letters of credit or similar financial instruments held in relation to the plan shall be deposited into the pension fund of the plan; and

(ii) until the time a new actuarial valuation report described in clause (c) is filed with the major authority in respect of the plan, amounts equal to the value of any new letters of credit or similar financial instruments that would have been required to have been obtained in relation to the plan under the pension legislation that permitted their use shall be deposited into the pension fund of the plan instead of obtaining such letters of credit or similar financial instruments, at or before the time those letters of credit or similar financial instruments would have been required to have been obtained in relation to the plan under the pension legislation that permitted their use and in accordance with the last actuarial valuation report that had been filed in respect of the plan with a pension supervisory authority.

SECTION 7.

DETERMINATION OF BENEFITS BY FINAL LOCATION

Deemed applicability of pension legislation

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.

SECTION 8.

PENSION PLAN INVESTMENTS

Deadline for compliance

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.

SECTION 9.

PENSION BENEFITS GUARANTEE FUND

Pension benefits guarantee fund

Subject to sections 10 to 18, this Agreement shall not affect the application or administration of the Pension Benefits Guarantee Fund set out under the pension legislation of Ontario or of any similar fund established under any other pension legislation.

PART IV

PENSION PLAN ASSET ALLOCATION BETWEEN JURISDICTIONS

SECTION 10.

APPLICABLE SITUATIONS

Applicable situations

The assets of a pension plan shall be allocated between jurisdictions 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 brings about 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.

SECTION 11.

ALLOCATION OF ASSETS

Standard methodology

(1) For the purposes of this Part, the assets of a pension plan as of the date of allocation shall be allocated into portions, 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 section 12.

Other methodology

(2) Despite subsection (1), 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 sections 12, 14, 16 and 17 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

(b) a Fellow of the Canadian Institute of Actuaries certifies that:

(i) the liabilities of the plan do not exceed the assets of the plan on either a solvency basis or a going concern basis; and

(ii) the allocation of the plan's assets will not differ materially from an allocation of the plan's assets conducted in accordance with sections 12, 14, 16 and 17.

SECTION 12.

VALUE OF PORTIONS

Value of portions

Subject to section 13, the portion of a pension plan's assets referred to in subsection (1) of section 11 that is subject to a jurisdiction's pension legislation shall be calculated by adding together the amounts referred to in section 14 as of the date of allocation, determined with respect to the benefits and other amounts described in section 14 that are subject to that jurisdiction's pension legislation and applying the requirements of sections 15 to 17.

SECTION 13.

PLAN WITH MORE THAN ONE PARTICIPATING EMPLOYER

Plan with more than one participating employer

(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 sections 11 and 12, and used in the manner provided for in section 17, 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 sections 11 and 12, and used in the manner provided for in section 17, 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.

SECTION 14.

DETERMINATION OF PORTIONS FOR ASSET ALLOCATION

Determination of portions

(1) For the purposes of an asset allocation under this Part, the assets of the plan as of the date of allocation shall be allocated into the portions described in subsection (1) of section 11 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 those liabilities requires 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, with the contributions, interest and value of the benefits calculated as of the date of allocation and consistent with the pension legislation that governs the benefits, other than any such excess amount already determined in relation to a person before the date of allocation, whether or not the 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 the benefits requires 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 (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).

SECTION 15.

RULES OF APPLICATION

Determining value of benefits and assets

For the purposes of sections 11 to 14, except subsection (6) of section 14, 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.

SECTION 16.

REDUCTION METHOD

Reduction method

To the extent that a value or amount referred to in subsection (3) or (4) of section 14 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 14, 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.

SECTION 17.

INSUFFICIENCY OF ASSETS

Insufficiency of assets

If at one of the levels of priority of allocation established by section 14 the assets of a pension plan that have yet to be allocated to a portion described in subsection (1) 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.

SECTION 18.

USE OF ASSETS FOLLOWING ALLOCATION

Use of allocated assets

(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 17 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 17 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 17 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.

PART V RELATIONS BETWEEN AUTHORITIES

SECTION 19.

COOPERATION

Reciprocal obligations

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) transmit to each other 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.

PART VI
EXECUTION AND COMING INTO FORCE OF AGREEMENT

SECTION 20.

EXECUTION AND COMING INTO FORCE

Effective date

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 party on behalf of which this Agreement has been signed on or before that date; and
- (b) on the date unanimously agreed to by all parties in respect of a party 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)]***.

SECTION 21.

ADDITIONAL PARTIES

Unanimous consent

- (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 jurisdiction's government that becomes a party to this Agreement and the jurisdiction and jurisdiction's pension supervisory authority as of the date referred to, as the case may be, in clause (a) or (b) of section 20.

SECTION 22.

WITHDRAWAL

Written notice

- (1) A party to this Agreement may withdraw from this Agreement by giving written notice to all other parties. Such notice shall be signed by a person authorized by the laws of the withdrawing party'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 party, and the Agreement shall remain in force for all other parties.

Minor authority

- (3) Where, upon expiry of the three-year period referred to in subsection (2), the pension supervisory authority for the withdrawing party'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 party'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 under the terms of this Agreement 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;

(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.

SECTION 23.

AMENDMENT

Unanimous consent

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

SECTION 24.

COUNTERPARTS

Execution in counterparts

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

SECTION 25.

EXECUTION IN ENGLISH AND IN FRENCH

Authentic texts

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

PART VII

IMPLEMENTATION AND TRANSITIONAL PROVISIONS

SECTION 26.

REPLACEMENT

Prior agreements

On the date referred to in clause (a) or (b) of section 20, 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.

SECTION 27.

TRANSITION

Preliminary measure

(1) Where this Agreement comes into force on a date set out under section 20 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.

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*, S.N.L. 1997, 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

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.

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 adoption of the amendment 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; and
- (e) requirements that the employer or trustee provide information to the administrator.

Pension plan records

- 5. Legislative provisions respecting:
 - (a) how long any person must retain information related to the pension; 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);
 - (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) who may be the trustee, custodian or holder of the pension fund; and
 - (g) 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;
 - (ii) annual or periodic statements for active members or other persons;and
 - (iii) information to active members or other persons with respect to plan amendments; 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

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 tribunal 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.

Part IV:

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 signatories 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 signatories 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 each individual provincial government. 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. Multijurisdictional pension plans can fall within both provincial and federal regulators' jurisdictions. In the absence of an inter-governmental agreement, multijurisdictional 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.

**PART I
GENERAL PROVISIONS**

Text from Agreement:

SECTION 1.

DEFINITIONS & SCHEDULES

Definitions

(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 to the person 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.

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 subject to the legislation of the jurisdiction of the major authority for a pension plan.

Text from Agreement:

SECTION 2.

APPLICATION

General application

(1) Subject to subsection (2) and section 27, this Agreement applies to any pension plan that is 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 parties to the Agreement and a pension plan only has active members in Ontario, but also has retirees in Quebec.*
- 2) **Transition measures:** Ontario, Quebec and Alberta are party to the Agreement and the plan's active membership is distributed as follows: 1000 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 administered by Ontario under the existing Memorandum of Reciprocal Agreement.

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

- 1) All of the plan's active members and other beneficiaries (retirees, deferred vested members, etc.) have, for the purposes of the Agreement, accrued all of their benefits in only one jurisdiction. This plan would not qualify as a multi-jurisdictional pension plan for the purposes of the Agreement.*
- 2) Ontario and British Columbia are parties to the Agreement. A pension plan for designated individuals has active members employed in Ontario and British Columbia. Ontario's pension legislation requires that plans for designated individuals be registered with the pension supervisory authority, but British Columbia's legislation does not require that such plans be registered. The Agreement would not apply to this pension plan, as it would only be registered in one jurisdiction that has entered into the Agreement (i.e., Ontario).*
- 3) **Transition measures:** Ontario, Quebec and Alberta are parties to the Agreement and the plan's active membership is distributed as follows: 900 in Ontario, 800 in Quebec, 700 in Alberta, 1000 in Manitoba. Manitoba would be designated as the major authority for the plan under the Agreement, but Manitoba is not party to the Agreement. As such, the existing Memorandum of Reciprocal Agreement would apply to all jurisdictions.*

**PART II
MAJOR AUTHORITY**

Text from Agreement:

SECTION 3.

DETERMINATION OF THE MAJOR AUTHORITY

One major authority

(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 27, 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 membership in each jurisdiction that has members in the plan. Please note that, for the purposes of the Agreement, members are still considered to be "active members" of a plan following an asset transfer, when assets and liabilities are not transferred in respect of those members.

Examples:

The following are examples of how a 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.

- 1) *All jurisdictions are party to the Agreement. A plan has 500 active members employed in Ontario, 450 in Quebec and 250 in British Columbia. The plurality of members is in Ontario, so the plan would be registered in Ontario with the Financial Services Commission of Ontario ("FSCO").*

- 2) *The federal government regulates pension plans that cover areas of federal jurisdiction, including (but not limited to) banking, inter-provincial transportation and telecommunications, as well as members employed in the three territories. Employment within these areas of federal jurisdiction is called “included employment” in the federal pension legislation.*

A plan has 350 active members that are subject to the pension legislation of Ontario, 400 that are subject to the legislation of Quebec, 250 that are subject to the legislation of British Columbia and 500 that are subject to the federal legislation. Since there are 500 members subject to the federal pension legislation, the plan would be registered federally with the Office of the Superintendent of Financial Institutions (Canada) (“OSFI”).

- 3) *A pension plan has 800 members in British Columbia, 500 in Alberta, 300 in Manitoba and 800 in Ontario. The Financial Institutions Commission of British Columbia (“FICOM”) is located in Surrey, and FSCO is located in Toronto. The pension plan administrator is in Calgary. The plan would be registered with FICOM because the office of the pension plan administrator, in Calgary, is closer to FICOM’s office in Surrey than to FSCO’s office in Toronto.*
- 4) *A pension plan has 300 members 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 pension plan for the affected employees, the new employer does **not** assume responsibility for past service liabilities and no assets are transferred out of the existing plan. Under Ontario’s legislation, in these circumstances the members are deemed not to have terminated their service. Therefore, FSCO will continue to be the major authority for this plan.*
- 5) *A plan is submitted to FICOM for registration. In reviewing the application for registration, there are 800 members in British Columbia, 830 in Alberta and 700 in Saskatchewan. Since the plurality of members is in Alberta, Alberta would be the major authority under the Agreement.*

FICOM would advise the 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. FICOM would also provide notice to the Office of the Alberta Superintendent of Pensions.

- 6) *A pension plan has 50 retirees in Quebec, 40 active members in Ontario and 10 active members in Alberta. Even though there are more inactive members in Quebec than active members in Ontario, Ontario would be the major authority for the plan. This is because the terms of this 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

- (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 major authority's pension legislation.

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 bring about 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 major authority's pension legislation 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 minor authority's pension legislation 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 this latter function, the minor authority delegates certain powers and functions in respect of the plan to the major authority.

However, this section provides the following exceptions to this requirement:

- 1) Where the major authority and a minor authority agree that a particular function or power conferred by the legislation of the minor authority's jurisdiction shall be exercised by that minor authority in respect of a plan, only the minor authority may exercise that function or power in respect of the plan.*
- 2) Where the major authority and a minor authority agree that a particular decision concerning the application of provisions of the pension legislation of the minor authority's jurisdiction shall be made by the minor authority in respect of a plan, only the minor authority may make that decision in respect of the plan.*
- 3) Where the pension legislation in a regulatory authority's jurisdiction provides the regulatory authority with the power to order or bring about the splitting of the assets and liabilities of a pension plan, only that regulatory authority may make a decision concerning the exercise of that power.*

With respect to decision-making and recourse, this section requires that the major authority make all initial decisions on matters that, for the purposes of the Agreement, would be subject to its own legislation (i.e., matters contained in Schedule B), as well as matters that would be subject to the legislation of a minor authority's jurisdiction (i.e., matters not contained in Schedule B). All such initial

decisions would be made according to the procedural provisions of the major authority's legislation.

However, if the decision related to a matter that was subject to the substantive legislation of a minor authority's jurisdiction, 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 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, but has active members in both Manitoba and Ontario. An Ontario member informs the Manitoba Superintendent of Pensions ("the Manitoba Superintendent") that he has not received his joint and survivor pension benefit in accordance with Ontario's pension legislation. The Manitoba Superintendent attempts to resolve the issue through discussion with the involved parties, but compliance with Ontario's legislation is not achieved. As such, 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 of the Agreement and the member is subject to Ontario's legislation in that regard, it would be filed with the Financial Services Tribunal in Ontario. The recourse would be made in accordance with the procedures in Ontario's legislation and the initial decision 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, but has active members in both Ontario and Manitoba. A Manitoba member informs the Ontario Superintendent of Financial Services ("the Ontario Superintendent") that he has not received his joint and survivor pension benefit in accordance with Manitoba's pension legislation. The Ontario Superintendent attempts to resolve the issue through discussion with the involved parties, but compliance with Manitoba's legislation is not achieved. As such, the Ontario Superintendent issues, to the plan administrator, a notice of proposal to make an order, 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 filed with the Manitoba Pension Commission. The recourse would be made in accordance with the procedures in Manitoba's legislation and the initial action issued by the Ontario Superintendent would be deemed to have*

been 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

(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.

Examples:

- 1) *A pension plan is registered 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. 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 membership. 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.

Upon receipt of the AIR for the 2013 plan year confirming the change in plurality, FSCO would provide notice of the impending change of major authority 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 be filed with FSCO in accordance with Ontario’s legislation, and the change of major authority would occur on December 26, 2015. 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 assumed 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.

- 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 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 Quebec (“Régie”).

As soon as possible after receiving the December 31, 2011 AIR, FSCO would notify the plan administrator and the two minor authorities (the Régie and the Office of the Alberta Superintendent of Pensions). 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, 2011 would still be filed with FSCO in accordance with Ontario’s legislation and the change of major authority would occur on December 26, 2012. This means that an AIR for the plan fiscal year ending December 31, 2012 would be filed with the Régie in accordance with Quebec’s legislation.

As soon as possible after the Régie assumed its role as major authority for the plan, it would provide notice to the plan administrator and the minor authorities 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 examples 1 and 2, 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.

As soon as possible after receiving the December 31, 2011 AIR, FSCO would notify the plan administrator and the two minor authorities (the Manitoba Pension Commission and FICOM) of the upcoming change in registration and major authority. 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 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 assumed the role of major authority for the plan, it would provide notice to the plan administrator and the minor authorities (FSCO and FICOM) 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 the 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 parties to the Agreement, but New Brunswick is not. A pension plan has active members in British Columbia, Manitoba and New Brunswick and is registered in British Columbia with FICOM. 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 would be completely subject to the existing Memorandum of Reciprocal Agreement (1968) instead of this Agreement.*

- 5) *All jurisdictions are party to the Agreement. A plan registered with the Office of the Alberta Superintendent has, in each of three consecutive fiscal years, 800 members in both British Columbia and Ontario, 500 in Alberta and 300 in Manitoba. The location of the pension 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 pension 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) *Referring back to example 1), the pension plan registered with the Financial Services Commission of Ontario ("FSCO"), shows the following changes in membership:*

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 issued a Notice of Proposal to Make an Order to the sponsor of this pension plan. The pension plan sponsor then requested a hearing before the Financial Services Tribunal ("FST") of Ontario, as permitted by section 89 (8) of Ontario's Pension Benefits Act. At December 26, 2015, the matter had not yet been heard by Ontario's FST.

Since this regulatory action has not yet been resolved by the date of change in major authority, the unresolved matter would be continued before the FST until resolved, that is, the decision had been issued, and either the time frame for an appeal expired or all avenues of appeal had been exhausted.

**PART III
APPLICABLE LAW**

Text from Agreement:

SECTION 6.

APPLICABLE LEGISLATION

Applicable pension legislation

(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, such funding shall be made in respect of that benefit, even if such funding would not be required 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, 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;

(c) subject to clause (d), 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 before the major authority assumed its duties in respect of the plan until such time as a new actuarial valuation report is filed in respect of the plan with the major authority that complies with the pension legislation of the major authority's jurisdiction; and

(d) when a pension supervisory authority becomes the major authority for a pension plan in accordance with this Agreement, if the pension legislation that applied before that authority became the major authority for the plan permitted the use of letters of credit or similar financial instruments to supplement, support or otherwise satisfy the funding requirements applicable to the plan under that legislation, but the pension legislation of the major authority does not permit the use of those letters of credit or similar financial instruments for the same purpose as that provided under the pension legislation that applied before that authority became the major authority for the plan, then:

(i) no later than thirty days before the authority becomes the major authority for the plan, an amount equal to the value of the letters of credit or similar financial instruments held in relation to the plan shall be deposited into the pension fund of the plan; and

(ii) until the time a new actuarial valuation report described in clause (c) is filed with the major authority in respect of the plan, amounts equal to the value of any new letters of credit or similar financial instruments that would have been required to have been obtained in relation to the plan under the pension legislation that permitted their use shall be deposited into the pension fund of the plan instead of obtaining such letters of credit or similar financial instruments, at or before the time those letters of credit or similar financial instruments would have been required to have been obtained in relation to the plan under the pension legislation that permitted their use and in accordance with the last actuarial valuation report that had been filed in respect of the plan with a pension supervisory authority.

Explanatory Notes:

This section describes the matters to which the 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 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 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. The legislation of a minor authority's jurisdiction will continue to apply with respect to all matters that are not referred to in Schedule B.

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

Section 6(2)(a) 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 benefits would be funded would be subject to the funding rules in the legislation of the major authority's jurisdiction.

Section 6(2)(b) acknowledges that a minor authority's jurisdiction may wish to provide additional funding protection to members subject to its jurisdiction through the creation of a special "additional liability". As such, this section requires that where an additional liability is established in relation to members subject to that minor authority's jurisdiction under the provisions of that minor authority's legislation, such additional liability must be funded, even if the legislation of the major authority's jurisdiction would not require such funding.

Section 6(2)(c) requires that, in the event of a change in major authority, the funding rules of the jurisdiction of the old major authority would apply, with respect to the funding of any benefit that has been based on the filing of actuarial valuation reports with a pension supervisory authority, until the next valuation report is filed with the new major authority. Once the next valuation report is filed, the funding rules of the jurisdiction of the new major authority would be applied to the plan and that filed report.

Section 6(2)(d) requires that, in instances where a letters of credit funding arrangement (or other similar arrangement) exists for a plan and the major authority for that plan changes to the pension supervisory authority for a jurisdiction that does not allow letters of credit funding, or does not allow for the type of letters of credit funding that was allowed in the old major authority's jurisdiction, the employer shall make a cash payment into the pension fund, no later than 30 days before the date of change in major authority, in an amount equivalent to the amount that is currently funded by letters of credit (or any other similar arrangements). In addition, future solvency amounts that would have been covered by providing additional letters of credit under the rules of the old major authority after the date of change in major authority, but before the date that the next actuarial valuation report is filed, would also be required to be paid in cash.

Examples:

- 1) *A pension plan registered with the Nova Scotia Office of the Superintendent of Pensions has members in Nova Scotia and Ontario. Ontario's legislation requires the funding of "grow-in" benefits. Nova Scotia's legislation does not require the funding of grow-in benefits. The Nova Scotia Office of the Superintendent of Pensions must require that grow-in benefits be funded for the Ontario plan members, although the general manner in which the grow-in benefits would be funded would be subject to the funding rules in Nova Scotia's pension legislation.*

- 2) *A pension plan registered with the Financial Services Commission of Ontario (“FSCO”) has members in Ontario and Quebec. Quebec’s legislation requires the funding of post-retirement indexation benefits. Ontario’s legislation does not require the funding of post-retirement indexation benefits. FSCO must require that post-retirement indexation benefits be funded for the Quebec plan members, 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.*

In addition, Ontario’s pension legislation requires that unisex mortality tables are used to determine how benefits are funded, but Quebec’s legislation requires that gender-specific mortality tables are used to determine funding. As such, for this pension plan, FSCO will require that all benefits are 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.

- 3) *A multijurisdictional pension plan has members in Alberta and Ontario. The major authority for the plan is the Office of the Alberta Superintendent of Pensions (“the Alberta Superintendent”). The funding of the benefits of the plan is based on the filing of actuarial valuation reports with the Alberta Superintendent. The last actuarial valuation report was submitted to the Alberta Superintendent on December 31, 2010.*

As a result of a shift in plurality of plan membership, FSCO becomes the new major authority for the plan on December 26, 2012. The plan administrator is not scheduled to file its next actuarial valuation report with FSCO until December 31, 2013. As such, this plan would be subject to funding rules in Alberta’s pension legislation until the actuarial valuation report for December 31, 2013 is filed with FSCO, at which point it will be subject to the funding rules in Ontario’s pension legislation.

- 4) *The pension plan described in Example 3 (above) is funded using a letters of credit arrangement, in the amount of \$500,000, in accordance with the funding rules in Alberta’s pension legislation. The pension plan would be required to make a cash payment of \$500,000 into the pension fund by November 26, 2012. In addition, any future solvency amounts that would have been covered by letters of credit between December 26, 2012 and December 31, 2013, under the funding rules in Alberta’s pension legislation, would now be required to be paid in cash.*

- 5) *A multi-jurisdictional pension plan has members in Quebec and the federal jurisdiction. The major authority for the plan is the Régie des rentes du Québec ("Régie"). The funding requirements in the legislation of both the federal jurisdiction and Quebec allow for the use of letters of credit arrangements, but the way in which the legislation of each jurisdiction allows letters of credit to be used differs. The pension plan has a letters of credit arrangement in the amount of \$700,000, subject to Québec's pension legislation.*

The funding of the benefits of the plan is based on the filing of actuarial valuation reports with the Régie. The last actuarial valuation report was submitted to the Régie on December 31, 2012. As a result of a shift in plurality of plan membership, the Office of the Superintendent of Financial Institutions ("OSFI") becomes the new major authority for the plan pension plan on December 26, 2013. The plan administrator is required to file its next valuation report on December 31, 2013. As such, this plan would be subject to the funding rules in Québec's pension legislation until the date that the actuarial valuation report for December 31, 2013 is filed with OSFI, at which point it will be subject to the funding rules in the pension legislation of the federal jurisdiction.

Since Québec's legislation permits the use of letters of credit arrangements for funding in a different manner than the federal legislation, the pension plan would be required to make a cash payment of \$700,000 into the pension fund by November 26, 2013.

Text from Agreement:**SECTION 7.****DETERMINATION OF BENEFITS BY FINAL LOCATION**

Deemed applicability of pension legislation

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.

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. See notes in section 9 for further details in this regard.

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 person is deemed to have been employed throughout his or her period of plan membership in British Columbia.*
- 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 person's benefit entitlement as of the date of termination, the person is deemed to have been employed throughout his or her entire period of plan membership in Quebec. As such, Quebec's pension legislation will apply to determine the*

member's entire accrued benefit and its commuted value. While most pension legislation requires that unisex mortality tables are used to determine the commuted value of benefits, 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 the 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 is deemed to have been employed, throughout his or her entire period of plan membership, in Saskatchewan. Saskatchewan's pension legislation will apply to determine all of the member's accrued benefits and will also apply to the locked-in vehicle.*

Text from Agreement:**SECTION 8.****PENSION PLAN INVESTMENTS**

Deadline for compliance

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 jurisdiction of the plan's major authority moves between jurisdictions with differing pension fund investment rules. The agreement specifies a five-year transition period, from the effective date that a new major authority assumes its duties in that regard, for the plan to bring its existing investments into compliance with the investment rules of the new major authority. All new investments made after the date that the new major authority assumes its duties must be fully compliant with the pension fund investment rules in the new major authority's jurisdiction.

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

Subject to sections 10 to 18, this Agreement shall not affect the application or administration of the Pension Benefits Guarantee Fund set out under the pension legislation of Ontario or of 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

The assets of a pension plan shall be allocated between jurisdictions 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 brings about 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. It 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 plan. This also does not affect the rights of members under the plan;

- 2) Split of a pension plan ordered by a supervisory authority;*
- 3) Withdrawal of an employer from a plan that has more than one participating employer – To date, this concept only exists under the Québec Supplemental Pension Plans Act (“SPPA”). The amendments that were made to the SPPA at the end of 2000 eliminated the concept of a partial 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 this agreement, where the pension legislation of a jurisdiction provides for a partial wind-up of a pension 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 jurisdictions define the term “plan termination” as the cessation of crediting benefits to plan members; and the term “plan winding up” as the distribution of the assets of a pension plan that has been terminated. For example, the British Columbia Pension Benefits Standards Act, 1996 specifically defines the two terms. It is important to note that, for the purposes of the Agreement, a full pension plan wind up involves the distribution of all of the assets of the pension plan;*
- 6) Withdrawal of plan assets by an employer permitted by the pension legislation in various jurisdictions, under circumstances other than those described above.*

Text from Agreement:**SECTION 11.****ALLOCATION OF ASSETS**

Standard methodology

(1) For the purposes of this Part, the assets of a pension plan as of the date of allocation shall be allocated into portions, 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 section 12.

Other methodology

(2) Despite subsection (1), 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 sections 12, 14, 16 and 17 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

(b) a Fellow of the Canadian Institute of Actuaries certifies that:

(i) the liabilities of the plan do not exceed the assets of the plan on either a solvency basis or a going concern basis; and

(ii) the allocation of the plan's assets will not differ materially from an allocation of the plan's assets conducted in accordance with sections 12, 14, 16 and 17.

Explanatory Notes:

This section establishes two methodologies for the allocation of assets: a standard methodology, as well as an optional methodology that could be used when certain conditions are met.

According to the standard methodology, the assets are to be allocated into portions in the event of an asset transfer or wind up. Each portion would be representative of the assets allocated to a particular jurisdiction that has members under the multi-jurisdictional pension plan.

The optional methodology is a simplified approach that could be used with the permission of the major authority in all cases where an allocation of assets is required by the Agreement, except upon the full wind up of a pension plan. In order to use the 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.*

Text from Agreement:

SECTION 12.

VALUE OF PORTIONS

Value of portions

Subject to section 13, the portion of a pension plan's assets referred to in subsection (1) of section 11 that is subject to a jurisdiction's pension legislation shall be calculated by adding together the amounts referred to in section 14 as of the date of allocation, determined with respect to the benefits and other amounts described in section 14 that are subject to that jurisdiction's pension legislation and applying the requirements of sections 15 to 17.

Explanatory Notes:

Following section 11, this section establishes the method of calculation of the portion of a pension plan's assets that are to be allocated to each jurisdiction upon the occurrence of a situation described under section 10.

Text from Agreement:**SECTION 13.****PLAN WITH MORE THAN ONE PARTICIPATING EMPLOYER**

Plan with more than one participating employer

(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 sections 11 and 12,

and used in the manner provided for in section 17, 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 sections 11 and 12, and used in the manner provided for in section 17, 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 members that are related to an employer for which a separate account was established and administered regarding the assets, liabilities, contributions, benefits and expenses of that employer, as if that account was a separate plan. This method is only applicable if the components 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 assets to the employers account was made in accordance with the method for allocating assets in the event of a "pension plan asset transfer", as provided for in section 14 of the Agreement.*

Upon the occurrence of a situation described under section 10 for a multi-employer pension plan that has established and administered separate accounts which meet the requirements set out in this section, the assets of the plan that have been determined and accounted for separately for an employer would constitute the employer share. Each employer share would then be further allocated into portions in accordance with the asset allocation methodology set out in sections 11 and 12 of the Agreement.

The application of this section is not limited to plans where each employer has its own separate account. It accommodates situations where separate accounting is only used for some of the employers that are party to the plan. This is patterned along the lines of Alberta's legislative provisions respecting multi-unit pension plans (MUPPs).

Examples:

- 1) *An employer is party to a pension plan with more than one participating employer. A separate account was established and maintained since the start of that employer's participation in the plan, in accordance with this section of the Agreement. The employer employs members in Ontario and Quebec. The employer establishes its own pension plan for all of its members, regardless of jurisdiction of employment. The parties to the plan agree to a transfer of assets. As such, the assets allocated to that employer would be those in its separate account and will be transferred to the new plan.*
- 2) *The employer described in example 1 (above) decides to establish a new plan, but only for Ontario members. The assets in the separate account of that employer will have to be allocated into two portions (Ontario and Quebec) in accordance with section 14 of the Agreement. The determination of the assets that would be effectively transferred to the new plan would be in accordance with Ontario's legislation.*

Text from Agreement:

SECTION 14.

DETERMINATION OF PORTIONS FOR ASSET ALLOCATION

Determination of portions

(1) For the purposes of an asset allocation under this Part, the assets of the plan as of the date of allocation shall be allocated into the portions described in subsection (1) of section 11 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 those liabilities requires 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, with the contributions, interest and value of the benefits calculated as of the date of allocation and consistent with the pension legislation that governs the benefits, other than any such excess amount already determined in relation to a person before the date of allocation, whether or not the 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 the benefits requires 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 (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 the levels of priority for asset allocation among jurisdictions upon the occurrence of a situation contemplated under section 10.

An overview of the levels of priority

The assets are to be allocated among jurisdictions according to four levels of priority. The first three levels of priority for the allocation of assets are based on wind up liabilities. This approach provides a basic level of protection to plan members in instances where a pension plan asset transfer is immediately followed by a full plan wind-up. In such an event, if the value of a 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 to be funded, then the assets transferred to another pension plan, as well as those remaining in the initial pension plan, should enable both plans to provide a comparable level of protection to the involved plan members.

First level of priority

The first level of priority for asset allocation covers the value of benefits that are to be determined solely as a function of amounts credited to the account of a person having benefits under the plan. This covers additional voluntary contributions, employer and/ or employee contributions paid under a defined contribution component of the plan, optional ancillary contributions paid under a flexible component of the plan, any amounts that a person had elected to transfer in the pension fund and excess contributions determined in the application of the 50 % rule before the date of allocation. The first level of priority also includes the interest attributable to the amounts described above.

However, it is important to note that the contributions or amounts that have been converted into pension benefits are not covered under the first level of priority. For example, amounts that have been transferred from one pension plan and are immediately used to recognize years of service 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 the agreement as, “core liabilities”. In order for a liability to qualify as a core liability, the applicable pension legislation for such liability must require its funding on a solvency basis. For example, post-retirement indexation is referred to as an “escalated adjustment” under Ontario’s pension legislation and it is not required to be funded on a solvency basis. On the other hand, post-retirement indexation is required to be funded on a solvency basis under Quebec’s pension legislation. Therefore, in a plan covering members who are subject to the pension legislation of both Ontario and Quebec, the value of the post-retirement indexation will not be a core liability for Ontario members, while it will be a core liability for Quebec members.

The value of core liabilities is equal to the sum of the value of the following four components, all of which are determined on a wind up basis:

- *the value of the benefits that are being paid on a regular and periodic basis. This covers both lifetime benefits (e.g. the normal pension) and temporary benefits (e.g. the bridge benefits);*
- *the value of accrued lifetime benefits that are not in payment on the date of transfer, 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 the excess contributions resulting from the 50% rule, where those excess contributions were not determined before the date of allocation and not already included in the first level of priority;*
- *for a person who had elected to be paid the commuted value of his benefits before the date of transfer, but such commuted value was not fully paid out, the unpaid balance of the value of the benefits and any interest attributable to that balance.*

Third level of priority

The third level of priority covers the value of all liabilities that are required to be funded by legislation on a solvency basis and that are not covered in core liabilities. The value of these liabilities is also to be determined on a wind up basis.

The following is a non-exhaustive list of benefits that would be included in the third level of priority for a member whose benefits are not in payment at the date of transfer:

- *pre-retirement inflation adjustment (additional benefit in Quebec)*
- *disability benefits (not already in payment)*
- *grow-in benefits*
- *bridging benefits*
- *subsidized early retirement benefits*
- *consent benefits*

In addition, the third level of priority includes what is referred to in the Agreement as an “additional liability”. In instances where a jurisdiction wishes to provide additional protection for members in its jurisdiction, a provision is included in the Agreement to allow for the recognition of an additional liability, as long as it is required to be funded. A jurisdiction that wishes to have such an additional liability recognized would need to amend its legislation in order to require the establishment of, and funding for, such an additional liability, in respect of members in its jurisdiction who are part of a multi-jurisdictional pension plan registered in another jurisdiction.

The asset allocation rules ensure that where an additional liability is required to be established and funded by a minor authority’s pension legislation, the assets allocated for the benefits and other amounts accrued under the plan that are subject to that minor authority’s pension legislation in accordance with the first three levels of priority, do not exceed the value of those benefits and amounts.

Fourth level of priority

The rules for the allocation of assets under the fourth level of priority vary whether it results from a pension plan wind up (defined for the purposes of this section of the Commentary Guide, to include full plan wind up, partial pension plan wind up and withdrawal of an employer from a multi-employer pension plan) or from one of the three other situations described in section 10 of the Agreement - namely, a pension plan asset transfer, split of a pension plan ordered by a supervisory authority and withdrawal of plan assets by an employer.

A) Rules for pension plan wind up:

The fourth level of priority for the allocation of assets upon pension plan wind up involves two steps. The first step involves an allocation of assets to cover the value of benefits that are not required to be funded and the reduction in the value of certain benefits that were in effect for less than five years, made in accordance with section 16 of the Agreement. To determine what benefits are required to be funded, one must consider the requirements of section 6 of the Agreement. According section 6, the funding rules applicable to a multi-jurisdictional pension plan are those set out in the legislation of the major authority's jurisdiction. However, if the pension legislation of a minor authority's jurisdiction requires the funding of a particular benefit that is not required to be funded under the legislation of the major authority's jurisdiction, then such benefit will be required to be funded for the members and beneficiaries that are subject to the pension legislation in the minor authority's jurisdiction.

For example, under Ontario's pension legislation, "escalated adjustments" are not required to be funded. However, under Quebec's pension legislation, such benefits are required to be funded. As such, if Ontario is the major authority for a multi-jurisdictional pension plan with members in Ontario and Quebec, the Financial Services Commission of Ontario ("FSCO") will require that escalated adjustments be funded for Quebec members and beneficiaries, even though such benefits would not be required to be funded for Ontario members and beneficiaries of the same multi-jurisdictional pension plan. On the other hand, if Quebec is the major authority for the same plan, then escalated adjustments would be required to be funded for both Ontario and Quebec members and beneficiaries.

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

$$\text{Remaining assets} \times \frac{\text{Value of all benefits}^2 \text{ for that jurisdiction}}{\text{Value of all benefits}^2 \text{ for all jurisdictions}}$$

² *Excluding benefits not required to be funded*

The formula above is a compromise between equity and simplicity. It targets mainly but not solely the benefits that were most pertinent in creating the remaining assets. As such, the value of the benefits that are not required to be funded is not taken into consideration for the allocation of remaining assets among jurisdictions. By including the value of the contributions and other amounts covered under the first order of priority, we make sure that the allocation methodology will be fully operative even for a pure defined contribution plan with assets in excess of the liabilities (e.g. after the conversion of a defined benefit plan into a defined contribution plan).

B) Rules for other situations:

For other situations, the allocation of assets under that level of priority also involves two steps. First, all remaining assets would be allocated in proportion to the going concern liabilities in order to produce, to the extent possible, the same going concern ratio for each portion allocated to each jurisdiction. When all portions have the same going concern ratio, but that ratio is lower than 1.0, the remaining assets continue to be allocated uniformly to each portion until the going concern ratio of each portion reaches 1.0, or when no assets remain to be allocated, whichever occurs first. For the purposes of this first step, the going concern ratio is established without taking into account the contributions and amounts covered under the first level of priority.

If any 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, including those that relate to the contributions and amounts covered under the first level of priority. That feature allows surplus assets be allocated to each portion under a pure defined contribution pension plan.

Examples:

A) Core liabilities:

- 1) *A pension plan has a normal retirement age of 65. The plan does not provide for an unreduced and unadjusted lifetime benefit for members below the normal retirement age of 65. The value of the core liabilities in respect of a member of the pension plan will be calculated using the lifetime benefit payable to such member at age 65.*
- 2) *A pension plan has a normal retirement age of 65. However, all members of the plan are entitled to an unreduced and unadjusted lifetime benefit at age 60. The value of the core liabilities in respect of a member of the pension plan will be calculated using the lifetime benefit payable to such member at age 60.*

- 3) *A pension plan has a normal retirement age of 65. In addition, all members of the plan are entitled to an unreduced and unadjusted lifetime benefit at age 60. However, one particular member has met the conditions to receive an unreduced and unadjusted pension at age 55. The value of the core liabilities in respect of the member will be calculated using the lifetime benefit payable to such member at age 60. The amount by which the value of the pension payable to the particular member at age 55 exceeds the value of the pension payable at age 60 will be considered as an “other liability” that is required to be funded and would be covered under the third level of priority for asset allocation, as set out in section 14.*
- 4) *A pension plan provides a pre-retirement indexation adjustment benefit to its members. The liability representing such a benefit would not be included as a core liability.*
- 5) *A pension plan provides a post-retirement indexation adjustment benefit to its members. The liability representing such a benefit would be included as a core liability, provided that it is required to be funded.*

B) Asset allocation methodology for pension plan wind up:

- 1) *A multi-jurisdictional pension plan registered with FSCO is to be partially wound up, as a result of the sale of its business segment involving inter-provincial transportation. The employees of that particular business segment are the only members of the pension plan that are subject to the federal pension legislation. An actuary is retained to calculate the assets that will be allocated to the federal jurisdiction. The following table illustrates the relevant liability components that are required to apply the asset allocation methodology set out in the Agreement:*

Value of relevant liability components for each jurisdiction

	British Columbia	Federal	Ontario	Quebec	Total
Defined contribution component	15	10	150	125	300
Core liabilities	75	85	1200	1000	2360
Other liabilities whose funding is required³	5	10	250	115	380
Other liabilities whose funding is not required⁴	0	0	150	0	150
Total liabilities	95	105	1750	1240	3190

*For the purpose of this example, assume that an “additional liability” has not been established by any jurisdiction. Assume also that the market value of the total plan assets is 3300. The overall wind up ratio of the pension plan is 103.4%, calculated by considering the assets and liabilities of the defined contribution component of the plan. The market value of assets (3300) exceeds the amount required to cover the first three **levels** of priority for the allocation of assets and the liabilities that are not required to be funded on a solvency basis (300 + 2360 + 380 + 150 = 3190). As such, it must be determined how the remaining assets will be allocated among the four jurisdictions with plan members.*

Allocation of remaining assets

	British Columbia	Federal	Ontario	Quebec	Total
Values of benefits covered under the first three levels of priority	95.0	105.0	1600.0	1240.0	3040.0
Assets allocated	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 is required. As shown in the table above, the total value of those benefits for the federal jurisdiction is 105. In addition, the total value of the benefits for which funding is required for all jurisdictions that have members in the plan is 3040. Moreover, the value of the remaining plan assets that must be allocated among jurisdictions is equal to 110.

³. On a solvency basis.

⁴. *Idem* 3.

Consequently, the share of the remaining assets to be allocated to the federal jurisdiction is calculated as:

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

The following table summarizes the end result of the allocation of the plan's assets among the four jurisdictions:

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

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

According to the table above, the final solvency ratio for the assets allocated to Ontario is lower than that calculated for the other three jurisdictions. This is because Ontario is the only one of the four jurisdictions in this example that has liabilities not required to be funded on a solvency basis. As noted above, such liabilities are not taken into account when allocating the remaining assets among jurisdictions once all liabilities are met under the fourth level of priority.

The total assets allocated to the federal jurisdiction equal 108.8 and the total value of benefits for the members and beneficiaries subject to the pension legislation in the federal jurisdiction are equal to 105.

- 2) A multi-jurisdictional pension plan, which is a pure defined contribution pension plan, registered with the Régie des rentes du Québec is to be fully wound up. The relevant liability components required to apply the asset allocation methodology set out in the Agreement are as follows:

Value of relevant liability components for each jurisdiction

	British Columbia	Federal	Ontario	Québec	Total
Defined contribution component	150	100	600	850	1700
Total liabilities	150	100	600	850	1700

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

This example raises the issue of the allocation of the remaining assets (125 = 1825 – 1700) among the four jurisdictions involved, which correspond to the surplus assets in the case of a pure defined contribution pension plan. The following table illustrates how the allocation of assets will be conducted.

Allocation of remaining assets

	British Columbia	Federal	Ontario	Quebec	Total
Values of benefits covered under the first level of priority	150.0	100.0	600.0	850.0	1700.0
Assets allocated	11.0	7.4	44.1	62.5	125.0

Under the asset allocation method, the distribution of the remaining assets is based on the values of the benefits 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 assets are allocated pro rata to the total of the values determined for each jurisdiction under the first level of priority. For example, the share of the remaining assets to be allocated to the Québec jurisdiction is calculated as:

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

The following table summarizes the end result of the allocation of the plan's assets among the four jurisdictions:

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

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

C) *Asset allocation methodology for other situations:*

- 1) *Part of the assets of a pension plan registered with the Financial Services Commission of Ontario (“FSCO”) are to be transferred to a pension plan registered with the federal Office of the Superintendent of Financial Institutions (“OSFI”), following the sale of its inter-provincial transportation business segment. The employees of that particular segment are the only members of the pension plan that are subject to federal pension legislation. An actuary is retained to determine the value of the assets that will be transferred to the purchaser’s pension plan. The relevant liability components required to apply the asset allocation methodology set out in the Agreement are as follows:*

Value of relevant liability components for each jurisdiction

	British Columbia	Federal	Ontario	Québec	Total
Defined contribution component, AVC	15	10	200	125	350
Core liabilities	75	85	1250	1000	2410
Other liabilities					
- Liabilities other than core liabilities whose funding is required	5	10	300	115	430
- Additional liability	0	0	0	0	0
Other liabilities whose funding is not required	0	0	150	0	150
Solvency liabilities	95	105	1900	1240	3340
Going concern liabilities	115	130	2000	1625	3870

For the purposes of this example, assume that an “additional liability” has not been established by any jurisdiction. Assume also that the total market value of assets is 2900. Consequently, the solvency ratio of the plan as a whole is 86.8% and its going concern ratio is 74.9%. It is important to note that these ratios are calculated by taking into account the assets and liabilities of the defined contribution component of the plan.

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

Based on the information above, an amount of 140 (2900 – 2760) would remain to be allocated under the third level of priority. The following table further illustrates how the allocation of assets would be conducted:

Allocation of assets under the third level of priority

	British				Total
	Columbia	Federal	Ontario	Québec	
Other liabilities whose funding is required	5.0	10.0	300.0	115.0	430.0
Asset allocation	1.6	3.3	97.7	37.4	140.0

The assets that are needed to cover the “other liabilities whose funding is required” (430) exceed the total assets available (140). In accordance with section 18, the available assets shall be allocated pro rata to the total value of the liabilities that rank equally in the third level of priority. This would be equal to 140 divided by 430 (0.3256). By applying that ratio to the value of the Ontario portion of the liabilities, the result obtained is 97.7 (0.3256 x 300.0). As such, the amount that is effectively allocated to the Ontario portion of the liabilities is 97.7.

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

Allocation of assets in accordance with the methodology determined 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	2 410.0
Third level of priority	1.6	3.3	97.7	37.4	140.0
Forth level of priority	0.0	0.0	0.0	0.0	0.0
Total assets allocated (by jurisdiction)	91.6	98.3	1547.7	1162.4	2900.0

As indicated in the above table, the amount allocated to the federal jurisdiction equals 98.3. According to section 18, the rules contained in the federal legislation for an asset transfer would be applied in order to determine the portion of that amount that will effectively be transferred to the purchaser's pension plan.

- 2) *An employer with a pension plan registered with FSCO sells part of its business. As a result, some of the employees subject to the pension legislation of both Ontario and Quebec will now become employees of the purchaser. Both the vendor and the purchaser agree to an asset transfer. An actuary is retained to determine the assets to be transferred to the purchaser's pension plan. The relevant liability components required to apply the assets allocation methodology defined in the Agreement are identical to those appearing in example 1.*

The market value of the assets is equal to 3250. Consequently, the solvency ratio of the plan as a whole is 97.3% and its going concern ratio is 84.0%. These ratios are determined by taking into account the assets and liabilities of the defined contribution component of the plan. Since the market value of assets (3250) exceeds the sum of the values of the defined contribution component, core liabilities and other benefits required to be funded (350 + 2410 + 430 = 3190), there are sufficient assets to cover the first three levels of priority.

The amount of unallocated assets available after the third level of priority is 60 (3250 – 3190). At the fourth level of priority, the assets are first allocated to

the portion having the lowest going concern ratio, then to portion having the next highest 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 assets under the fourth level of priority

	British Columbia	Federal	Ontario	Quebec
Going concern ratio after asset allocation under the third level of priority ⁵	80.0%	79.2%	86.1%	74.3%
Assets needed to reach the second lowest going concern ratio	0.0	0.0	0.0	72.5

The above table indicates that Quebec has the lowest going concern ratio (74.3%). To reach the next highest going concern ratio (79.2%), an amount of 72.5 should be allocated to the Quebec portion. Consequently, all remaining assets (60) would be allocated to that portion. This ends the asset allocation process under the fourth level of priority and the overall allocation process. The following table summarizes the results of the asset allocation process:

Allocation of assets in accordance with the methodology determined 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
Forth level of priority					
- Assets allocated to reach the second lowest going concern ratio	0.0	0.0	0.0	60.0	60.0
Total assets allocated (by jurisdiction)	95.0	105.0	1750.0	1300.0	3250.0

⁵ *In accordance with the Agreement, the allocation of assets made under the fourth level of priority is done using a going concern ratio determined without taking into account the contributions and amounts covered under the first level of priority, until all portions have the same going concern ratio on that basis, and that ratio is equal to or greater than 1.0.*

In this example, only some of the employees subject to Ontario's pension legislation would become employees of the purchaser. As such, the asset allocation methodology set out in Ontario's legislation would then be applied to split the Ontario assets (1750) into two parts – one for the benefits that would remain in the vendor's pension plan; and one for those that would be transferred to the purchaser's pension plan. The same process is applicable for employees subject to the Quebec pension legislation.

- 3) *Based on the characteristics defined in example 2, this example examines the application of the asset allocation methodology contained in the Agreement, in a case where the assets exceed both the solvency liabilities and the going concern liabilities.*

In this example, the total value of assets is 4000. The following table shows the results of the asset allocation process:

Allocation of assets in accordance with the methodology determined 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
Forth level of priority					
- Assets allocated to reach the second lowest going concern ratio	0.0	0.0	0.0	72.5	72.5
- Assets allocated to reach the third lowest going concern ratio	0.0	1.0	0.0	12.5	13.5
- Assets allocated to reach the highest going concern ratio	6.1	7.3	0.0	91.7	105.1
- Assets allocated to reach a going concern ratio of 1.0	13.9	16.7	250.0	208.3	488.9
- Allocation of remaining assets	3.9	4.4	67.2	54.6	130.0
Total assets allocated (by jurisdiction)	118.9	134.4	2067.2	1679.6	4000.0

Text from Agreement:

SECTION 15.

RULES OF APPLICATION

Determining value of benefits and assets

For the purposes of sections 11 to 14, except subsection (6) of section 14, 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.

Explanatory Notes:

This section 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.

Text from Agreement:**SECTION 16.****REDUCTION METHOD**

Reduction method

To the extent that a value or amount referred to in subsection (3) or (4) of section 14 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 14, 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.

Explanatory Notes:

If a jurisdiction amends its pension legislation to require 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, this section sets out a five-year transition period to transfer the liabilities for these benefits from the fourth level of priority, to the second or third level of priority for allocation, depending on whether the liability qualifies as a “core liability”, or as another liability that is required to be funded.

Example:

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

On October 31, 2013, the pension plan, described above, winds up. At the effective date of the wind up, the value of the liabilities associated with the new benefit is equal to 1000. The wind up occurred after the end of the second year, but prior to the beginning of the third year since the effective date of the legislative amendment in Ontario. As a result, 40% (or 400) of the value of the liabilities associated with the new benefit would be included in the third level of priority for asset allocation. The remaining 60% (or 600) of the value of the liabilities associated with the new benefit would be included in the fourth level of priority for asset allocation.

Text from Agreement:

SECTION 17.

INSUFFICIENCY OF ASSETS

Insufficiency of assets

If at one of the levels of priority of allocation established by section 14 the assets of a pension plan that have yet to be allocated to a portion described in subsection (1) 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 assets will be allocated when assets are insufficient to fully cover the value of the liabilities and other amounts allocated to a particular level of priority.

Examples:

Please see the examples provided in the explanatory notes for section 14, illustrating the allocation of assets when assets are insufficient to fully cover the value of the liabilities and other amounts allocated to a particular level of priority.

Text from Agreement:**SECTION 18.****USE OF ASSETS FOLLOWING ALLOCATION**

Use of allocated assets

(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 17 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 17 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 17 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 of the Agreement sets out how the assets allocated among jurisdictions would be used subsequent to the allocation. If one of the situations described under Section 10 occurs to a multi-jurisdictional pension plan, it is necessary to comply with the rules in Part IV of the Agreement in determining how assets will be allocated among jurisdictions. Once such allocations are made, the portion allocated to each jurisdiction will be used as set out in the legislation of that jurisdiction.

PART V
RELATIONS BETWEEN AUTHORITIES

Text from Agreement:

SECTION 19.

COOPERATION

Reciprocal obligations

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) transmit to each other 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 regulatory 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 20.

EXECUTION AND COMING INTO FORCE

Effective date

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 party on behalf of which this Agreement has been signed on or before that date; and
- (b) on the date unanimously agreed to by all parties in respect of a party 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 provision establishes when the Agreement will come into force for the jurisdictions that form the initial parties to the Agreement, and when it will come into force for jurisdictions that become party to the Agreement after the initial effective date.

Example:

If the initial effective date of the Agreement under section 20(a) is set as January 1, 2011, the Agreement would come into force as of January 1, 2011 for those jurisdictions who have signed on to the Agreement on or by that date.

Therefore, any jurisdiction that has not signed on to the Agreement as of January 1, 2011, would be subject to section 20(b) should it choose to join the Agreement.

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

Jurisdiction	Date Agreement signed	Effective Date
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 section 20(a).

- *Having signed on to the Agreement on the day in which it comes into effect, Newfoundland and Labrador signs on to the Agreement under section 20(a) and is considered an original signatory.*

Saskatchewan, which signs on to the Agreement on January 2, 2011, would be subject to section 20(b) and must reach agreement with the original signatories as to the effective date of its entry into the Agreement. For the purposes of this example, the Agreement would be effective for Saskatchewan on June 1, 2011, as determined by consensus between the original signatories and Saskatchewan.

Alberta, which signs on to the Agreement on May 1, 2011, would be subject to section 20(b) and must reach agreement with the original signatories and Saskatchewan as to the effective date of its entry into the Agreement. For the purposes of this example, the Agreement would be effective for Alberta on September 1, 2011.

- *Although the Agreement would not be in force for Saskatchewan until June 1, 2011, as a signatory, its agreement must be obtained as to the effective date of Alberta’s entry into the Agreement.*

New Brunswick, which signs on to the Agreement on September 1, 2011, would be subject to section 20(b) and must reach agreement with the original signatories, Saskatchewan and Alberta as to the effective date of its entry into

the Agreement. For the purposes of this example, the Agreement would be effective for New Brunswick on January 1, 2012.

Finally, on January 1, 2014, Manitoba signs on to the Agreement, and in accordance with section 20(b), must reach agreement with the original signatories, Saskatchewan, Alberta and New Brunswick as to the effective date of its entry into the Agreement. For the purposes of this example, the Agreement would be effective for Manitoba on June 1, 2014.

Text from Agreement:

SECTION 21.

ADDITIONAL PARTIES

Unanimous consent

(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 jurisdiction's government that becomes a party to this Agreement and the jurisdiction and jurisdiction's pension supervisory authority as of the date referred to, as the case may be, in clause (a) or (b) of section 20.

Explanatory Notes:

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

Text from Agreement:

SECTION 22.

WITHDRAWAL

Written notice

(1) A party to this Agreement may withdraw from this Agreement by giving written notice to all other parties. Such notice shall be signed by a person authorized by the laws of the withdrawing party'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 party, and the Agreement shall remain in force for all other parties.

Minor authority

(3) Where, upon expiry of the three-year period referred to in subsection (2), the pension supervisory authority for the withdrawing party'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 party'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 under the terms of this Agreement 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;

(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 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 jurisdiction to withdraw from the Agreement.

Text from Agreement:

SECTION 23.

AMENDMENT

Unanimous consent

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 24.

COUNTERPARTS

Execution in counterparts

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

Explanatory Notes:

This section establishes that each jurisdictional representative that enters into the Agreement may do so by signing an individual copy of the Agreement, even if it is not the same copy that has been signed by the other signatories that are party to the Agreement.

Text from Agreement:

SECTION 25.

EXECUTION IN ENGLISH AND IN FRENCH

Authentic texts

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 26.

REPLACEMENT

Prior agreements

On the date referred to in clause (a) or (b) of section 20, 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 the Agreement will replace the existing Memorandum of Reciprocal Agreement and any existing bilateral agreements respecting multi-jurisdictional pension plans, for parties that have signed the Agreement.

Text from Agreement:

SECTION 27.

TRANSITION

Preliminary measure

(1) Where this Agreement comes into force on a date set out under section 20 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.

Explanatory Notes:

This section describes the process by which a pension plan would become subject to the Agreement upon the Agreement's initial coming into force and how the major authority for the plan would be determined. This section also sets out the notice requirements resulting from the coming into force of the Agreement and the status of matters pending prior to the Agreement taking effect.

Examples:

- 1) *Ontario and Quebec become subject to the Agreement on January 1, 2011. A pension plan registered with the Financial Services Commission of Ontario ("FSCO") has active members in both Ontario and Quebec, and FSCO would become the major authority for the plan under the Agreement on January 1, 2011.*

Shortly after January 1, 2011, FSCO would send notice that FSCO is the major authority for the plan to the administrator of the plan and to the Régie des rentes du Québec ("the Régie"). The plan administrator must then inform the employer sponsoring the plan and the collective bargaining agent for the members that FSCO is the major authority within 90 days of receiving the notice. The plan administrator must also inform any person entitled to receive an annual statement of benefits from the plan that FSCO is the major authority by the time that the next annual statement of benefits is required to be provided (under Ontario's legislation, this is required 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 has active members in both Ontario and Saskatchewan. FSCO would become the major authority for the plan under the Agreement on June 1, 2011.*
- 3) *Quebec and the federal jurisdiction become subject to the Agreement on January 1, 2011. A pension plan is registered both with the Régie and the*

Office of the Superintendent of Financial Institutions (“OSFI”). The plurality of plan members is employed in the federal jurisdiction, and OSFI would become the major authority under the Agreement on January 1, 2011.

However, if the federal jurisdiction does 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.

In either case, any matter pending before the Régie as of the day before OSFI becomes the major authority will remain subject to Quebec’s legislation.