

# Addendum

## Addendum for British Columbia LIFs

### SCHEDULE 2

(section 116)

#### PENSION BENEFITS STANDARDS REGULATION

#### LIFE INCOME FUND ADDENDUM

#### PART 1 - DEFINITIONS AND INTERPRETATION

##### Definitions and interpretation

1 (1) Subject to subsection (3), the following terms, used in this addendum, have the meanings given to them below, except where the context otherwise requires:

“Act” means the *Pension Benefits Standards Act*, S.B.C. 2012, c. 30;

“annuity” means a non-commutable life annuity contract that is issued or issuable by an insurance company to provide, on a deferred or immediate basis, a series of periodic payments for the life of the annuity holder or for the lives jointly of the annuity holder and the annuity holder’s spouse;

“designated beneficiary” has the same meaning as in the *Wills, Estates and Succession Act*;

“life income fund issuer” means the issuer of this life income fund;

“life income fund maximum amount”, in relation to the income that may be paid out of a life income fund to an owner in a calendar year, means the greatest of

- (a) the investment returns for the most recently completed calendar year for the owner’s life income fund,
- (b) the minimum amount of income that, under the *Income Tax Act* (Canada) or the *Income Tax Regulations* (Canada), is required to be paid out of the owner’s life income fund that year, and
- (c) the amount determined by dividing the life income fund balance by the withdrawal factor

where

“CANSIM rate”, in relation to a period of not more than 12 months for which interest is payable, means the rate of interest on long-term bonds issued by the government of Canada for the month of November preceding the calendar year in relation to which the withdrawal factor is being calculated, determined by reference to the Canadian Socio-Economic Information Management System (CANSIM) Series VI22487 compiled by Statistics Canada and available on the website maintained by the Bank of Canada;

“life income fund balance”, in relation to a life income fund, means

- (a) in the calendar year in which the fund is established, the balance of the owner’s life income fund as at the date on which the fund is established, and
- (b) in every subsequent calendar year, the balance of the owner’s life income fund as at January 1 of the calendar year in which the calculation is made;

“withdrawal factor” means the actuarial present value on January 1 of the calendar year in which the calculation is made of an annuity of \$1, payable at the beginning of each calendar year between that date and December 31 of the calendar year during which the owner reaches the age of 90 years, and calculated by using

- (a) for the first 15 calendar years in relation to which the actuarial present value is determined, the greater of the following:
  - (i) 6% per year;
  - (ii) the CANSIM rate, and

(b) for each calendar year after the first 15 calendar years, 6% per year;

“locked-in money” means

- (a) money the withdrawal, surrender or receipt of which is restricted under section 68 of the Act,
- (b) money to which paragraph (a) applies that has been transferred out of a pension plan
  - (i) to one or more locked-in retirement accounts or life income funds, and any interest on that money, or
  - (ii) to an insurance company to purchase an annuity that is permitted under the Act,
- (c) money in a locked-in retirement account that was deposited into the locked-in retirement account under section 105 (1) of the Regulation or paid to the locked-in retirement account issuer under section 105 (2) or (3) (b) of the Regulation, and
- (d) money in a life income fund that was deposited into the life income fund under section 124 (1) of the Regulation or paid to the life income fund issuer under section 124 (2) or (3) (b) of the Regulation;

“member owner” means the owner of this life income fund if

- (a) the owner was a member of a pension plan, and
- (b) this life income fund contains locked-in money from that plan;

“owner”, in relation to this life income fund, means

- (a) the member owner of this life income fund, or
- (b) the spouse owner of this life income fund;

“Regulation” means the Pension Benefits Standards Regulation enacted under the Pension Benefits Standards Act, S.B.C. 2012, c. 30;

“spouse” means a person who is a spouse within the meaning of subsection (2);

“spouse owner” means the owner of this life income fund if this life income fund contains locked-in money from a pension plan and the owner is

- (a) the spouse or former spouse of a member of the pension plan or member owner whose entitlement to the locked-in money in this life income fund arose by virtue of a breakdown of the marriage or marriage-like relationship between the owner and the member or member owner, or
  - (b) the surviving spouse of a deceased member of the pension plan or member owner whose entitlement to the locked-in money in this life income fund arose by virtue of the death of the member or member owner;
- “this life income fund” means the life income fund to which this addendum applies.

(2) Persons are spouses for the purposes of this addendum on any date on which one of the following applies:

- (a) they
  - (i) are married to each other, and
  - (ii) have not been living separate and apart from each other for a continuous period longer than 2 years;
- (b) they have been living with each other in a marriage-like relationship for a period of at least 2 years immediately preceding the date.

(3) Terms used in this addendum that are not defined in subsection (1) but are defined in the Act or the Regulation have the meanings given to them in the Act or the Regulation.

# Addendum cont'd

## PART 2 - TRANSFERS IN AND TRANSFERS AND PAYMENTS OUT OF LIFE INCOME FUND

### Limitation on deposits to this life income fund

- 2 (1) Subject to subsection (2), the only money that may be deposited in this life income fund is
  - (a) locked-in money transferred from a pension plan if
    - (i) this life income fund is owned by a member owner, or
    - (ii) this life income fund is owned by a spouse owner, or
  - (b) money deposited by the life income fund issuer under section 124 (1) of the Regulation or paid to the life income fund issuer for deposit to this life income fund under section 124 (2) or (3) (b) of the Regulation.
- (2) The life income fund issuer must not accept a transfer of locked-in money to this life income fund unless
  - (a) a copy of the consent required by section 103 (2) (c) or confirmation required by section 121 (1) (b) (ii) of the Regulation has been provided to the issuer, and
  - (b) if the locked-in money is coming from a pension plan by way of a transfer by a member of the plan or from a locked-in retirement account by way of a transfer by the owner of the account, the member or member owner or spouse owner, within the meaning of paragraph (a) of the definition of "spouse owner", is at least 50 years of age.
- (3) For the purpose of subsection (2) (a), the spouse's consent or confirmation is valid for each successive transfer of money in this life income fund to another life income fund or a life income type benefits account in a pension plan.

### Payment of retirement income

- 3 (1) The owner of this life income fund must, at the beginning of each calendar year, notify the life income fund issuer in writing of the amount of income that is to be paid out of the life income fund during that year, which amount must accord with subsection (5).
- (2) If the owner of this life income fund fails to notify the life income fund issuer in accordance with subsection (1) in any calendar year, the life income fund issuer must, subject to subsection (4), pay to the owner, in that year, the minimum amount of income that, under the Income Tax Act (Canada) or the Income Tax Regulations (Canada), is required to be paid out of the owner's life income fund in that year.
- (3) The owner of this life income fund must, at any time that money is transferred to this life income fund, other than from another life income fund or a life income type benefits account in a pension plan, notify the life income fund issuer in writing of the amount of income that is to be paid out of the life income fund during that year, which amount must accord with subsection (5).
- (4) The owner of this life income fund may, at any time during a calendar year, change the amount of income that is to be paid out of this life income fund during that year to a different amount that accords with subsection (5).
- (5) There must be paid from a life income fund in each calendar year an amount of income that is
  - (a) not less than the minimum amount of income that, under the *Income Tax Act* (Canada) or the *Income Tax Regulations* (Canada), is required to be paid out of the owner's life income fund in that year, and
  - (b) not more than the life income fund maximum amount applicable to the owner's life income fund for that year.

### Limitation on payments and transfers from this life income fund

- 4 (1) Money in this life income fund, including investment earnings, is for use in the provision of retirement income.

- (2) Despite subsection (1), money may be paid or transferred from this life income fund in the following circumstances:
  - (a) by way of a transfer to another life income fund on the applicable conditions set out in this addendum;
  - (b) by way of a transfer to a locked-in retirement account;
  - (c) by way of a transfer to an insurance company to purchase an annuity in accordance with section 7;
  - (d) by way of a transfer to a pension plan if the plan text document of the plan allows the transfer;
  - (e) in accordance with Part 4 of this addendum.
- (3) Without limiting subsections (1) and (2) of this section and in accordance with section 70 of the Act, money in this life income fund must not be assigned, charged, alienated or anticipated and is exempt from execution, seizure or attachment.
- (4) The life income fund issuer must comply with any applicable requirements of the Act and the Regulation before allowing a payment or transfer of any of the money in this life income fund.

### General liability for improper payments or transfers

- 5 If the life income fund issuer pays or transfers money from this life income fund contrary to the Act or the Regulation,
  - (a) subject to paragraph (b), the life income fund issuer must,
    - (i) if less than all of the money in this life income fund is improperly paid or transferred, deposit into this life income fund an amount of money equal to the amount of money that was improperly paid or transferred, or
    - (ii) if all of the money in this life income fund is improperly paid or transferred, establish a new life income fund for the owner and deposit into that new life income fund an amount of money equal to the amount of money that was improperly paid or **transferred, or**
  - (b) if
    - (i) the money is transferred out of this life income fund to an issuer (the "transferee issuer") that is authorized under the Regulation to issue life income funds,
    - (ii) the transfer is contrary to the Act or the Regulation in that the life income fund issuer failed to advise the transferee issuer that the money is locked-in money, and
    - (iii) the life income fund issuer deals with the money in a manner that is contrary to the manner in which locked-in money must be dealt with under the Act or the Regulation, the life income fund issuer must pay to the transferee issuer, in accordance with the requirements of the Act and the Regulation relating to transfers of locked-in money, an amount equal to the amount dealt with in the manner referred to in subparagraph (iii).

### Remittance of securities

- 6 (1) If this life income fund holds identifiable and transferable securities, the transfers referred to in this Part may, unless otherwise stipulated in the contract to which this is an addendum, be made, at the option of the life income fund issuer and with the consent of the owner, by the transfer of those securities.
- (2) There may be transferred to this life income fund identifiable and transferable securities, unless otherwise stipulated in the contract to which this is an addendum, if that transfer is approved by the life income fund issuer and consented to by the owner.

### Retirement income from annuity

- 7 (1) The money in this life income fund must not be transferred to an insurance company to purchase an annuity unless
  - (a) payments under the annuity do not begin until the member owner or spouse owner, within the meaning of

## Addendum cont'd

- paragraph (a) of the definition of "spouse owner", as the case may be, has reached 50 years of age,
- (b) payments under the annuity begin on or before the last date on which a person is allowed under the *Income Tax Act* (Canada) to begin receiving a pension from a registered pension plan,
  - (c) there is no differentiation among the annuitants on the basis of gender, and
  - (d) if the owner is a member owner who has a spouse,
    - (i) the annuity is in the form of a joint and survivor pension referred to in section 80 (2) of the Act, or
    - (ii) one of the following has been provided to the life income fund issuer:
      - (A) a waiver in Form 2 of Schedule 3 of the Regulation signed by the spouse in the presence of a witness and outside the presence of the member not more than 90 days before the date that payments are to begin;
      - (B) confirmation, in a form and manner satisfactory to the life income fund issuer, that section 145 of the *Family Law Act* applies.

- (2) A transfer under subsection (1) must be made within 60 days after the receipt by the life income fund issuer of all records that are necessary for the issuer to make the transfer.

### PART 3 - DEATH OF OWNER

#### Payment on death of member owner

- 8 (1) Subject to subsection (2), if this life income fund is owned by a member owner who has died and he or she is survived by a spouse, the life income fund issuer must pay the money in this life income fund to the surviving spouse.
- (2) If this life income fund is owned by a member owner who has died and
- (a) he or she is not survived by a spouse, or
  - (b) he or she is survived by a spouse and one of the following has been provided to the life income fund issuer:
    - (i) a waiver in Form 4 of Schedule 3 of the Regulation signed by the spouse before the member owner's death in the presence of a witness and outside the presence of the member owner;
    - (ii) confirmation, in a form and manner satisfactory to the life income fund issuer, that section 145 of the *Family Law Act* applies,

the life income fund issuer must pay the money in this life income fund to the member owner's designated beneficiary or, if there is no living designated beneficiary, to the personal representative of the member owner's estate.

- (3) A payment under subsection (1) or (2) must be made within 60 days after the receipt by the life income fund issuer of all records that are necessary for the issuer to make the payment.

#### Payment on death of spouse owner

- 9 (1) If this life income fund is owned by a spouse owner who has died, the life income fund issuer must pay the money in this life income fund to the spouse owner's designated beneficiary, or, if there is no living designated beneficiary, to the personal representative of the spouse owner's estate.
- (2) A payment under subsection (1) must be made within 60 days after the receipt by the life income fund issuer of all records that are necessary for the issuer to make the payment.

### PART 4 - APPLICATIONS TO UNLOCK ALL OR PART OF LIFE INCOME FUND

#### Lump-sum payment of small account balance

- 10 (1) On application by the owner of this life income fund, the life income fund issuer will pay to the owner the lump-sum amount referred to in section 69 (2) of the Act and section

- 126 of the Regulation if, on the date of the application,
- (a) the balance of this life income fund does not exceed 20% of the Year's Maximum Pensionable Earnings (YMPE) under the Canada Pension Plan for the calendar year in which the application is made, or
  - (b) the owner is at least 65 years of age and the balance of this life income fund does not exceed 40% of the YMPE for the calendar year in which the application is made.
- (2) A payment under subsection (1) must be made within 60 days after the receipt by the life income fund issuer of all records that are necessary for the issuer to make the payment.

#### No splitting of contract

- 11 If this life income fund is not eligible for the lump-sum payment option referred to in section 10 of this addendum, the money in this life income fund must not be divided and transferred to 2 or more locked-in retirement accounts, life income funds, pension plans or annuities or any combination of them if that transfer would make the money in anyone or more of them eligible for a lump-sum payment option under section 10 of this addendum or section 69 (1) or (2) of the Act.

#### Shortened life

- 12 (1) On application by the owner of this life income fund, the life income fund issuer will pay to the owner the payment, or series of payments for a fixed term, referred to in section 69 (4) (a) of the Act of all or part of the money held in this life income fund if
- (a) a medical practitioner certifies that the owner has an illness or a disability that is terminal or likely to shorten the owner's life considerably, and
  - (b) this life income fund is owned by a member owner and the member owner does not have a spouse, or, if the member owner does have a spouse, one of the following has been provided to the life income fund issuer:
    - (i) a waiver in Form 1 of Schedule 3 of the Regulation signed by the spouse in the presence of a witness and outside the presence of the member owner not more than 90 days before the date of the withdrawal;
    - (ii) confirmation, in a form and manner satisfactory to the life income fund issuer, that section 145 of the *Family Law Act* applies.
- (2) A payment under subsection (1) must be made, or a series of payments under subsection (1) must begin, within 60 days after the receipt by the life income fund issuer of all records that are necessary for the issuer to make the payment or begin the series of payments.

#### Non-residency for tax purposes

- 13 (1) On application by the owner of this life income fund, the life income fund issuer will pay to the owner the lump-sum amount referred to in section 69 (4) (b) of the Act and section 128 of the Regulation if
- (a) the owner includes in the application
    - (i) a statement signed by the owner that the owner has been absent from Canada for 2 or more years, and
    - (ii) written evidence that the Canada Revenue Agency has confirmed that the owner is a non-resident for the purposes of the *Income Tax Act* (Canada), and
  - (b) this life income fund is owned by a member owner and the member owner does not have a spouse, or, if the member owner does have a spouse, one of the following has been provided to the life income fund issuer:
    - (i) a waiver in Form 1 of Schedule 3 of the Regulation signed by the spouse in the presence of a witness and outside the presence of the member owner not more than 90 days before the date of the withdrawal;

## Addendum cont'd

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- (ii) confirmation, in a form and manner satisfactory to the life income fund issuer, that section 145 of the *Family Law Act* applies.
- (2) A payment under subsection (1) must be made within 60 days after the receipt by the life income fund issuer of all records that are necessary for the issuer to make the payment.

### **Financial hardship**

- 14 (1) On application by the owner of this life income fund in accordance with section 129 of the Regulation, the life income fund issuer will pay to the owner the lump-sum amount referred to in section 69 (4) (c) of the Act, up to the amount prescribed under section 129 (5) of the Regulation, if
- (a) the owner meets the requirements of the financial hardship exception set out in section 129 (4) of the Regulation, and
  - (b) this life income fund is owned by a member owner and the member owner does not have a spouse, or, if the member owner does have a spouse, one of the following has been provided to the life income fund issuer:
    - (i) a waiver in Form 1 of Schedule 3 of the Regulation signed by the spouse in the presence of a witness and outside the presence of the member owner not more than 90 days before the date of the withdrawal;
    - (ii) confirmation, in a form and manner satisfactory to the life income fund issuer, that section 145 of the *Family Law Act* applies.
- (2) A payment under subsection (1) must be made within 60 days after the receipt by the life income fund issuer of all records that are necessary for the issuer to make the payment.