Guidance

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Under the *Pension Benefits Standards Act, 1985* (PBSA) employers must ensure that payments are made to the pension fund. The normal meaning of payment is a cash payment. Therefore an employer cannot unilaterally decide to make a payment to a pension plan in anything other than cash to satisfy the normal cost and special payment requirements of section 9 of the *Pension Benefits Standards Regulations, 1985* (PBSR).

However, the plan administrator can agree to acquire an asset from the employer (the purchase price being satisfied, in whole or in part, by the amount owed to the pension plan). This agreement or transaction to acquire the assets would be considered an investment decision of the plan administrator. This decision, the investment and the transaction would have to meet the requirements and restrictions of the PBSA, the PBSR(including Schedule III), the terms of the plan documents and the Statement of Investment Policies and Procedures (SIP&P). Under Schedule III to the PBSR, the employer is a “related party”. Consequently, these requirements include the requirements and restrictions concerning related party transactions.

Section 16 of Schedule III of the PBSR prohibits a related party transaction unless it meets one of the exceptions for related party “transactions” under section 17(1) or 17(3) of this Schedule.

- the transaction is required for the operation or administration of the plan and the terms and conditions of the transaction are not less favourable than market terms and conditions or

- the value of the transaction is nominal or the transaction is immaterial to the plan. (Subsection 17(4) of Schedule III requires that for the purposes of subsection 17(3), two or more transactions with the same related party shall be considered as a single transaction.)

This type of related party investment transaction would not be viewed as required for the operation or administration of the fund but the transaction may be considered immaterial to the plan, depending on the value of the asset involved and how materiality is defined in the plan's SIP&P.

Any related party transaction must meet the requirements of the PBSA, the PBSR (including Schedule III), the SIP&P, the terms of the plan and the fiduciary and conflict of interest rules applicable to the plan sponsor and plan administrator.

Please note that this interpretation relates to federally registered pension plans. Provincial pension regulators may have additional or other standards regarding the acceptability of contributions in kind.

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