Instruction guide

Title	Registration of a Defined Contribution Pension Plan
Publication type	Instruction guide
Topics	Registrations
Plans	Defined contribution plans
Year	2022

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- OSFI 48DC - Application form for the Registration of a Defined Contribution Pension Plan

Introduction

The Office of the Superintendent of Financial Institutions (OSFI) has issued this Instruction Guide to assist plan administrators of defined contribution pension plans in completing form OSFI 48DC – Application form for the Registration of a Defined Contribution Pension Plan (PDF) (Application form).1

Once a plan is established to provide benefits to employees in included employment2, it falls under federal jurisdiction and is subject to the federal *Pension Benefits Standards Act, 1985* (PBSA). These plans must, with certain exceptions,3 be registered with OSFI.

This Instruction Guide does not replace the PBSA, the Pension Benefits Standards Regulations, 1985 (PBSR), the Directives of the Superintendent pursuant to the Pension Benefits Standards Act, 1985 (the Directives), or any guidelines that OSFI has issued or may issue regarding the administration of plans subject to the PBSA. If there is a discrepancy between this Instruction Guide and the legislation, the legislation prevails. OSFI may require documentation not mentioned in this Instruction Guide or the Application form.

A copy of the pension legislation, the Directives and OSFI issued guidelines can be found on OSFI's website.

1. Filing an Application

Plan administrators must file a completed Application form (PDF) and all required documentation as detailed in Part II of the Application form (the Application form together with the required documentation will be referred to as the "Application" throughout this Instruction Guide). The Application should be submitted by email to Approvals-

Approbations@osfi-bsif.gc.ca. The Application form and required documents can be signed electronically.

If the Application cannot be filed electronically, it may be submitted by mail to the following address:

Office of the Superintendent of Financial Institutions

255 Albert Street

Ottawa, ON K1A 0H2

The Application must be submitted to OSFI within 60 days after the plan is established.[4]

2. Jurisdiction of Registration

Some plans cover employees in both included employment and employees who are subject to provincial pension legislation. These plans are known as multi-jurisdictional pension plans (MJPPs).

On July 1, 2020, the federal government, together with the governments of British Columbia, Alberta, Saskatchewan, Ontario, Quebec, New Brunswick and Nova Scotia, signed the 2020 Agreement Respecting MJPPs (2020 Agreement). The 2020 Agreement requires that a MJPP must only register with one pension regulator (i.e. the "major authority"), and sets out rules for determining which pension regulator will be the major authority for the plan.[5] As a general rule, the major authority is the pension regulator of the jurisdiction with the plurality of active members in the plan. If the plurality of active members is in included employment, the major authority would be OSFI and the plan would be registered federally.

Before July 1, 2020, bilateral agreements were in effect between the federal government and most provinces. Since the government of Manitoba is not a signatory to the 2020 Agreement, the bilateral agreement between the federal government and Manitoba will remain in effect. Similarly to the 2020 Agreement, the bilateral agreement stipulates that plans are to be registered with the jurisdiction with the plurality of active members.

As Newfoundland and Labrador did not sign the 2020 Agreement and the federal government does not have a bilateral agreement with that province, dual registration is required for plans with members in both included employment and members subject to Newfoundland and Labrador's legislation.

Finally, as there is no provincial pension legislation in force in Prince Edward Island (PEI), a plan with members in both included employement and in PEI is to be registered with OSFI.

The 2020 Agreement also outlines the timing for when a major authority will lose its status in this regard and the transitional rules that apply.[6] If a MJPP that was previously registered with a provincial pension regulator is transferred to the federal jurisdiction following a change in the major authority, it must be registered with OSFI and an Application will need to be submitted.

The 2020 Agreement provides that the major authority supervises the MJPP on behalf of the minor authorities and as such the signatories to the 2020 Agreement have agreed that certain requirements of the major authority's pension legislation (e.g. rules around funding requirements) will apply to the entire plan.[7] However, for certain requirements (e.g. cessations of membership), the minor authorities' pension legislation, will continue to apply to the individual benefits of members.

3. Assessment of Pension Plans

Once the Application has been filed,[8] OSFI will determine the assessment and issue an invoice to the plan administrator. Subsequent assessments will be determined on an annual basis and invoices will be sent directly to the plan administrator.[9] Please refer to OSFI's website page on Pension Plan Assessments.

4. OSFI Registration Process

The PBSA provides that the Superintendent shall register a plan if all of the required documents have been filed by the plan administrator, including a declaration of compliance.[10] A complete list of the required documents is included in the Application form. Any approval of the Superintendent, including the registration of a plan, may be subject to terms and conditions.[11] The Superintendent may refuse to register a plan if it does not comply with the requirements of the PBSA.[12]

Submitting a complete Application will assist with the timely review of the Application. OSFI will not proceed with its review of the Application until all required documentation is received. Should the Application remain incomplete 60

days after the applicant received written notification from OSFI of missing documentation, OSFI may treat it as withdrawn. If withdrawn, OSFI will notify the Canada Revenue Agency of this status.

OSFI will register a plan established for different groups of employees or for different employers who contribute different amounts in accordance with an agreement, by-law or statute, as long as the minimum funding requirements of the PBSA are applied to the plan as a whole.

OSFI relies on the Declaration of Compliance (see Part III of the Application form) that is filed at the time of registration. If OSFI finds that there are areas of non-compliance, following registration, the Superintendent will notify the plan administrator of the particulars of the non-compliance with the PBSA.

If the Superintendent refuses to register a plan, the administrator of that plan may, within 60 days, serve on the Superintendent a Notice of Objection.[13] On receipt of a Notice of Objection, the Superintendent shall reconsider the refusal and notify the administrator of their decision. If the Superintendent still refuses to register the plan, the administrator may appeal the refusal to the Federal Court.[14]

5. After Filing for Registration

5.1. Changes to Information or Plan Documents

Any changes to the information provided on the Application form must be submitted to OSFI in writing and administrators are encouraged to do so electronically. Any amendments to the plan text or other plan documents, along with OSFI Form 593, must be filed with OSFI using the Regulatory Reporting System.[15]

5.2. Regulatory Reporting System

OSFI, along with the Canada Deposit Insurance Corporation and the Bank of Canada, uses a web-based Regulatory Reporting System (RRS) to gather and process financial and corporate returns from federally regulated private pension plans, deposit-taking institutions and insurance companies.

Once the Application has been filed, the plan administrator will receive an RRS registration package. All plans must register with RRS in order to file their regulatory returns with OSFI. Please see the appendix to this Instruction Guide

for a list of required annual filings.

Please note that any changes to the roles and contact information for the plan should be updated in RRS by completing the Pension Plan Annual Corporate Certification annually or more frequently, if required.

For more information about RRS and the annual filing process, please visit our website.

5.3. Subscribe to Email Notifications

OSFI highly recommends that all plan administrators and consultants subscribe to the Email Notification Service to receive important updates and pension related news including Info*Pensions*, our semi-annual newsletter. Please note that you can subscribe by topic and choose to only receive notifications related to pension plans.

6. The Application form

If the space provided on the Application form is insufficient, additional information may be attached.

6.1. Part I

Line 001

The official name of the plan as defined in the plan documents. The official plan name must be used in all supporting plan documents such as the trust agreement or insurance contract and the Declaration of Compliance.

The name of the plan should reflect the class of employees eligible to join the plan.

All full-time and part-time employees of a class for which a plan is established must be eligible to participate in the plan.16 The plan text for all plans (including plans with one or a few members) must include the eligibility criteria and the criteria must be related to employment.

- For example, a plan established for the president of XYZ Company would satisfy this requirement; whereas a plan established for Jane Smith of XYZ Company would not.
- Similarly, a plan for senior executives of ABC Company would be acceptable; while a plan for designated senior executives would not.

If the plan is established for a specific person in a position and may not necessarily be offered to the next person in that position, the name of the person along with the title of the position may be included in the eligibility criteria for the plan. For example, President of XYZ Company, Jane Smith.

Line 004

Select the box that indicates the plan type.

A multi-employer pension plan (MEPP) is a plan in which two or more employers participate and whose contributions are determined under an agreement, statute or regulation. MEPPs are sometimes established for employees in industries, such as transportation, where employees tend to move among employers or are employed by more than one small to medium-sized employer.

A plan may have more than one participating employer but is not considered a MEPP if more than 95% of the plan members are employed by participating employers who are incorporated and affiliated within the meaning of the *Canada Business Corporation Act*.

For a MEPP or a plan that has more than one participating employer but is not a MEPP, list all of the participating employers. Please include contact information and website hyperlink for each participating employer, and indicate which one is the principal employer.

Line 006

The plan administrator is the body legally responsible for administering the plan.[17] Generally, in the case of a single employer plan, it is the employer.[18] If a single employer plan is collectively bargained and the terms of the agreement provide for a board of trustees (or other similar body), the plan administrator is the board of trustees.[19]

For a MEPP established under one or more collective agreements, the plan administrator is a board of trustees or other similar body constituted in accordance with the terms of the plan or collective agreement.[20] In the case of any other MEPP, the plan administrator is a pension committee that is constituted in accordance with the terms of the plan but subject to section 7.1 of the PBSA.[21]

The Plan administrator name is the corporate or business name of the employer, committee or board.

For plans where the administrator is a board of trustees or pension commitee, the primary contact would generally be the Chair of the board of trustees or pension committee.

The plan administrator is not to be confused with the third-party administrator as entered in Part I, Line 007 of the Application form.

Line 007

If the tasks associated with the day-to-day administration of the plan have been assigned to a third party, the name and contact information of the third party must be indicated here.

Line 008

All plans must file annual Certified Financial Statements (OSFI 60).

Depending on how the pension fund assets are invested, some plans must also file an auditor's report of the pension fund. An auditor's report is **not** required if:

- all assets of the pension fund are held under one insurance company contract,
- all assets of the pension fund are held in the pooled funds of one trust company,
- all assets of the pension fund are held by one trust company but outside of its pooled funds, and the fair market value of the total assets of the pension fund are less than $5,000,000, or
- the plan is a fully insured plan (i.e. all benefits are guaranteed by means of an annuity or a guaranteed insurance contract).

Any other scenario (including a plan established under the *Pension Fund Societies Act*) requires the filing of an annual auditor's report of the pension fund.

If the assets are held in a trust, please provide the name and contact information for each Trustee in the table provided.

Line 009

Enter the name of the pension fund custodian(s), as well as their contact information should OSFI have specific questions regarding the pension fund or contributions. If there is more than one custodian, please provide the names and contact information for each. Please also enter the policy or account number(s). In cases where the custodian has more than one branch office, please specify the city of the appropriate branch office next to the company name.

A custodial agreement means an agreement that provides that:

1. an investment made or held on behalf of the plan is considered part of the plan's pension fund, and shall never be considered an asset of the custodian; and
2. records shall be maintained by the custodian that are sufficient to allow the ownership of any investment to be traced to the plan at any time.[22]

Applicants are expected to file a copy of their custodial agreement with OSFI as part of their Application.

Please note that plan administrators are required to notify, in writing, the custodian of the pension fund of all amounts that are to be remitted to the pension fund and the expected date of the remittance.[23] Most plan administrators inform their custodian of these amounts by sending the custodian what is often referred to as a "contribution planner".[24] This document allows the custodian to compare the money that was remitted to the pension fund with the amounts that were expected.

Plan administrators and custodians are also required to notify OSFI immediately if the payment is not remitted within 30 days of the expected date of remittance.[25] OSFI should receive notice when payments are not remitted regardless of whether a plan has been registered.

Line 010

Plan administrators are required to establish a Statement of Investment Policies and Procedures (SIP&P) in relation to a plan's portfolio of investments and loans, other than those relating to any member choice accounts.[26] As a result, defined contribution plans that offer only member choice accounts are not required to have a SIP&P. Plan

documents may nevertheless specify that a SIP&P will be established for such plans, in which case OSFI would expect a SIP&P to be established in accordance with the plan documents.

While the plan administrator is not required to establish a SIP&P for member choice accounts, they do have a fiduciary responsibility to ensure that the pension fund's assets are invested prudently. A plan administrator should therefore establish, implement and adhere to policies and procedures that support its responsibilities with respect to the investment options offered to members.This would include documenting the process for establishing and evaluating the investment options. The rationale for the selection of the default option should also be documented.

Line 011

If the plan is being created as a result of a division/spin-off/termination of another plan (the prior plan), this section must be completed. If assets are being transferred from the prior plan to this new plan, the plan administrator should verify with the appropriate pension regulator if approval is required for the transfer.

Line 012

If the plan is being transferred from a provincial jurisdiction to OSFI (e.g. due to a change in plurality of membership)[27], an Application must be completed so that it may be registered federally and so that OSFI may document the appropriate data for supervisory purposes. Please note that the effective date of transfer should be provided to you by the current provincial regulator.

Line 015

Each member of the plan and each employee who is eligible to join, and that person's spouse or common-law partner, must be given a written explanation of the terms of the plan within 60 days after the establishment of the plan.[28]

Line 016

The regulation of employment is generally provincial in nature. Therefore, in order for a plan to be subject to the PBSA, employment for which the plan is established must be in connection with the operation of any work, undertaking or business for which the federal Parliament has exclusive legislative authority. This is defined in the

PBSA as included employment.[29] Certain employment is exempted from the application of the PBSA.[30]

The following activities are defined as included employment regardless of the geographic location of the employees:

- any work, undertaking or business carried for or in connection with navigation and shipping, both inland and maritime;
- ferries between provinces (interprovincial) or between a province and the US (international);
- interprovincial or international rail transportation;
- air transportation;
- interprovincial or international road transportation;
- communications, including radio, television, telegraph and telephone companies;
- banks;
- any work, undertaking or business that is declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces. This includes atomic energy, uranium mining, flour or feed mills, feed warehouses, grain-seed cleaning mills and certain grain elevators;
- employment in the Northwest Territories, Yukon or Nunavut;
- any undertaking or business outside the exclusive legislative authority of provincial legislatures.

Indigenous Band Councils are undertakings under federal jurisdiction for labour relations and pension purposes. Employees of Band Councils engaged in governance functions and in the general administration of the Band's affairs are in included employment for the purpose of the PBSA. Whether OSFI regulates pension plans offered by corporations or organizations distinct from Band Councils depends on the nature of the business they operate, as determined by its regular activities.

Whether employees are subject to the Canada Labour Code and whether or not the union (if any) is certified federally may be factors to consider when determining jurisdiction. However, due to the complex nature of determining jurisdiction, plan administrators may wish to seek a legal opinion confirming the jurisdiction if the nature of employment appears unclear. OSFI expects that the jurisdiction of a plan will be determined prior to submitting an Application and that sufficient information supporting the determination is provided to OSFI.

Line 017

Plan membership must be reported as of the effective date of the plan or as of the date of the most recent plan year end when transferred from another jurisdiction, as applicable.

Members are to be reported by geographic location of employment in columns 001 and 002 (includes members whose work may or may not be in included employment).

"Members" are defined as those employees who have joined the plan and have not retired or ceased membership. [31] Members therefore include those employees whose membership was interrupted because of lay-off, suspension, disability or leave of absence, whether or not contributions are being made to the plan on their behalf.

"Other Beneficiaries" include:

- retirees, survivors and former members entitled to pension benefits under the plan; and
- survivors and former members who elected portability but whose pension benefit credits or any portion thereof remain in the plan.

Members and other beneficiaries in included employment **only** are to be reported in column 003. Members subject to provincial legislation are **not** to be included in this column.

In the "Grand Total" line, enter the total number of members and other beneficiaries. The total is the number that will be used when calculating the plan's assessment.

Line 019

Contributions are required from the effective date of the plan regardless of whether the plan registration has been completed.

6.2. Part II

Line 021

All of the required documents that are submitted to OSFI must be certified copies of the originals.

A Board or Band Resolution is not always required, and will depend on the governance procedures or requirements in the plan text. If not required to establish the plan, an explanation should be provided on the Application form. Also, a cost certificate must clearly indicate the effective date of the plan and the end of the first plan year.

Line 022

If the plan is established pursuant to a collective agreement or if any aspects of the plan are collectively bargained, the collective agreement(s) must be submitted with the Application. Please indicate the relevant sections.

6.3. Part III

Declaration of Compliance

The Declaration of Compliance must be signed by an authorized officer of the plan administrator (see Line 006). The "official name of the Plan" must be the name used on Line 001 of the Application form.

The Declaration of Compliance includes a reference to the plan's Statement of Investment Policies and Procedures (SIP&P). Further information on preparing this statement is available on OSFI's website.

If the plan only offers member choice investments, a SIP&P is not required, unless required by the terms of the plan (see Line 010). If the terms of the plan do not explicitly require that a SIP&P be established, a member choice plan must nevertheless have documented policies regarding the investment options provided to its members including the default investment option, in order for the plan administrator to meet its responsibilities under subsection 8(4.1) of the PBSA (prudent person rule). However, the documented policies would not have to meet the requirements for a SIP&P as set out in section 7.1 of the PBSR. More information on the default option for member choice defined contribution plans is available on our website.

In addition, please also review the information on defined contribution and capital accumulation plans available on the Canadian Association of Pension Supervisory Authorities' website.

Appendix: Ongoing Defined Contribution Plan Filing Requirements

The chart below is provided for information purposes only and the documents referred to in the chart do not have to be filed with the Application. Please refer to OSFI's website for additional details on filing requirements.

Action or Required Filing	Deadline
Annual Information Return (OSFI 49) and Schedule A – Canada Revenue Agency Information Requirements (OSFI 49)	6 months after plan year end
Pension Plan Annual Corporate Certification (PPACC)	6 months after plan year end **or when changes occur**
Certified Financial Statements (OSFI 60), Auditor's Report Filing Confirmation (ARFC) and, if required, an Auditor's Report	6 months after plan year end
Plan Assessments	Payable upon receipt of the OSFI-issued invoice
Annual statements to members and former members and their spouses or common-law partners	6 months after plan year end
Amendments to documents that create or support the plan or pension fund	Within 60 days after the amendment is made

* These filings are required from registered plans as well as plans that are established but have yet to be registered.

1 With respect to the registration of a defined benefit pension plan or a plan that contains both a defined benefit and a defined contribution component, please see the Instruction Guide for the Registration of a Defined Benefit Pension Plan.

2 Subsection 4(4) of the PBSA defines included employment and Part I, Line 017 of this Instruction Guide provides further explanation.

3 Plans that have members under federal jurisdiction (i.e. in included employment) as well as members under provincial jurisdiction may need to be registered with the appropriate provincial regulatory authority rather than with OSFI. See section Jurisdiction of Registration of this Instruction Guide for more information.

4 Subsection 10(1) of the PBSA.

5 Section 3 of the 2020 Agreement.

6 Section 5 of the 2020 Agreement.

7 Schedule B of the 2020 Agreement.

8 Section 10 of the PBSA.

9 Section 4 of the Assessment of Pension Plans Regulations.

10 Subsection 10(2) of the PBSA.

11 Subsection 5(3) of the PBSA.

12 Subsection 10(3) of the PBSA.

13 Form 5 of Schedule II of the PBSR.

14 Sections 32 and 33 of the PBSA.

15 Refer to the Instruction Guide on Filing Pension Plan Amendments unsing the Regulatory Reporting System (RRS) for further information.

16 Subsections 14(1) and 15(1) of the PBSA.

17 Section 7 of the PBSA.

18 Subparagraph 7(1)(c)(i) of the PBSA.

19 Subparagraph 7(1)(c)(ii) of the PBSA.

20 Paragraph 7(1)(a) of the PBSA.

21 Paragraph 7(1)(b) of the PBSA.

22 Subsection 6(2) of the PBSR.

23 Subsection 9.1(1) of the PBSA.

24 To assist all parties in meeting their obligations under the PBSA, OSFI has posted a contribution planner, the Schedule of Expected Contributions Form (PDF), on its website. The use of this form is not compulsory and administrators may choose to use another format to notify the custodian of expected contributions.

25 Subsection 9.1(2) of the PBSA.

26 Subsection 7.1(1) of the PBSR.

27 See section on Jurisdiction of Registration of this Instruction Guide.

28 Subsection 28(1) of the PBSA.

29 Subsection 4(4) of the PBSA.

30 Subsection 4(5) of the PBSA and section 28 of the PBSR.

31 Subsection 2(1) of the PBSA.