



SECTION: Transfer Rights

INDEX NO.: T500-850

TITLE: No Transfers Outside Canada
- PBA, 1990, s. 42, O. Reg. 909, ss. 20(3), s. 21

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Note: This policy as originally published contained inaccurate references to provisions of Regulation 909, which have been corrected.

Transfer of Commuted Value on Termination Outside Canada

The *Pension Benefits Act* (the “PBA”) provides three portability options to former pension plan members who terminate employment before the normal retirement age. The portability options set out in section 42 are: (a) transferring the commuted value of a pension benefit to another pension plan willing to accept the funds; (b) transferring the commuted value to a prescribed retirement savings arrangement, such as a locked-in RRSP or a Life Income Fund; or (c) purchase of a deferred life annuity. PCO staff have received several enquiries seeking clarification of the responsibilities of a pension plan administrator in instances where individuals seek to transfer the commuted value of their deferred pension to a pension fund or financial institution located outside of Canada.

A plan administrator must comply with a former member’s direction as to the portability option selected within 30 days of receipt of the direction, subject to meeting the requirements of section 42 and the Regulation. Subsection 20(3) of the Regulation provides that an administrator shall not transfer the commuted value of a pension or deferred pension unless the transferee has agreed to administer the amount transferred in accordance with the PBA and Regulation.

Furthermore, subsection 21(1) of the Regulation requires that in order for an RRSP to qualify as a prescribed retirement savings arrangement pursuant to section 42 of the PBA, it must be established in accordance with the *Income Tax Act* (Canada) (the “ITA”). Clause 21(2)(a)(iii) of the Regulation states that if a deferred or immediate annuity is purchased, it must be provided by a person authorized under the laws of Canada to sell annuities as defined by the ITA under an insurance contract that meets the requirements of section 22 of the Regulation.

A financial institution or a pension fund based outside Canada is most unlikely to be able to meet these requirements, and therefore, a plan administrator could not be satisfied that the requirement of subsection 20(3) can be met.

It may be appropriate for plan administrators and consultants to obtain independent legal advice if they have any concerns as to whether statutory obligations under the PBA and Regulation are being met.