Legislation matters

STANDARD LIFE

July 2010

1

Significant changes to the Manitoba pension legislation

The Government of Manitoba has announced what it calls the most significant changes to its Pension Benefits Act and Regulation in 35 years.

The changes came into force on May 31, 2010 and as a result, the new requirements will apply to events, such as termination of employment, retirement, death or division of benefits on marriage breakdown, which occur on or after May 31, 2010.

However, changes regarding restrictions on portability after early retirement date under defined benefit pension plans came into effect on March 31, 2010, and changes regarding pension committees will come into effect on May 31, 2011, for pension plans registered before May 31, 2010 or which filed for registration before that date.

There are several changes and they include the following:

- Immediate vesting retroactive to July 1, 1976.
- Immediate locking-in, with the exceptions of voluntary and optional ancillary contributions. In addition, a member who is at least 45 years old with 10 years of service or plan membership may unlock up to 25% of the value of his benefits earned during the period beginning July 1, 1976 and ending December 31, 1984.
- Revised commutation rules for small amounts. A member is entitled to unlock his benefits, if
  - **Under a defined contribution pension plan**, the value of the member's account is less than 20% of the YMPE for the year in which the cessation of active membership occurs. The YMPE in 2010 is equal to $47,200.
  - **Under a defined benefit pension plan**, the annual pension to be provided at normal retirement age is not more than 4% of the YMPE for the year in which the cessation of active membership occurs, or the commuted value of the member's benefits if it is less than 20% of the YMPE for the year in which the cessation of active membership occurs.
- In addition to owners of Life Income Funds (LIF) and Locked-In Retirement Income Funds (LRIF) who are already allowed to make one-time transfers to a not-locked-in RRIF, called a prescribed RRIF, members who are at least 55 years old and entitled to transfer money out of pension plans at the time of applying, are now also allowed to make one-time transfers of up to 50% of their funds to a prescribed RRIF.
- If the plan provisions permit, funds may be unlocked, under a pension plan, a Locked-In Retirement Account (LIRA), a LIF or an LRIF, by members or owners whose life expectancy is shortened, by reason of a terminal illness or disability, to less than two years.
- If the plan provisions permit, funds may also be unlocked, under a pension plan, a LIRA or a LIF, by non-resident former members or non-resident owners.
- The joint and survivor pension is reduced to 60% from approximately 66 2/3%.
- A plan may provide for phased retirement.
- Pension plans registered in Manitoba with 50 members or more will have to be administered by pension committees.

Amendments to pension plan texts must be filed by December 31, 2011.

Current LIRA and LIF contracts (LRIF contracts are to be discontinued by December 31, 2010) will have to be amended accordingly by the December 31, 2010.

Pension plans with 50 members or more registered in Manitoba before May 31, 2010 or which filed for registration before that date will have to be administered by pension committees by May 31, 2011.

We will keep our pension plan sponsors and Manitoba LIRA and LIF owners posted from time to time on any developments which may impact their plan text or contract, as the case may be.

2

Changes to the federal PBSA, 1985

On March 29, 2010, the federal government tabled Bill C-9, which is proposing amendments, among other things, to the federal Pension Benefits Standards Act, 1985 (PBSA). Bill C-9 contains most of the proposed changes to the PBSA announced by the Government on October 27, 2009.

Bill C-9 proposes to amend the PBSA to

(a) require an employer to fully fund benefits if the whole of a pension plan is terminated;

(b) authorize an employer to use a letter of credit, if certain conditions are met, to satisfy solvency funding obligations in respect to a pension plan which has not been terminated in whole;

(c) permit a pension plan to provide for variable benefits, similar to those paid out of a Life Income Fund, in respect of a defined contribution provision of the pension plan;

(d) establish a distressed pension plan workout scheme, under which the employer and representatives of members and retirees may negotiate changes to the plan's funding requirements, subject to the approval of the Minister of Finance;

(e) permit the Superintendent of Financial Institutions to replace an actuary if the Superintendent is of the opinion that it is in the best interests of members or retirees;

(f) provide that only the Superintendent may declare a pension plan to be partially terminated;

(g) provide for the immediate vesting of members' benefits;

(h) require the administrator to make additional information available to members and retirees following the termination of a pension plan; and

(i) repeal spent provisions.

On May 3, 2010, The Minister of Finance, M. Jim Flaherty, tabled a draft regulation in order to modify the Pension Benefits Standards Regulations, 1985, which is applicable to federally-regulated pension plans.

The changes proposed are in respect of regulation and complement the legislative changes in Bill C-9.

The following changes to the Pension Benefits Standards Regulations, 1985, are proposed:

- A new standard, which uses average – rather than current – solvency ratios to determine minimum funding requirements. This will soften the impact of short-term market fluctuations on a plan's solvency funding requirements.
- Limiting contribution holidays, unless the solvency ratio exceeds full funding plus a new solvency margin, set at a level of 5% of solvency liabilities. The practice of taking contribution holidays was widespread in the past and added to the underfunding of pension plans.
- A modernized investment framework, which removes the limits on the amounts pension plans can invest in resource and real property investments. More specifically, the proposed amendments to investment rules would see the removal of the 5%, 15%, and 25% quantitative investment limits in respect to resource and real property investments.

  The federal government indicates its intent to propose further modifications to the investment rules in respect to the 10% concentration and a general prohibition on pension fund investment in the shares of its sponsoring employer in future regulatory amendments.

  However, the federal government has concluded that it remains appropriate at this time for prudential reasons to keep the 30% rule, which states that a pension plan may not own more than 30% of the voting shares of a single entity.

3 Ontario Bill 54 – Retirement Savings Plans for Employees and Self-Employed Persons Act, 2010

Liberal MP, Mr. Jeff Leal of Peterborough, at the Ontario legislature recently presented a private Bill (Bill 54) to allow, among other things, the establishment of a new type of plan: the DC multi-employer pension plan. The proposals provided under Bill 54 reflect mostly the recommendations provided by the Canadian Life and Health Insurance Association Inc. in its new public policy paper, "Saving More for the Future: An Achievable Goal for Canadians". Bill 54 sets out the following proposals:

1. Modifications to the Ontario Employment Standards Act, 2000

a) Every employer that has 20 or more employees in Ontario would be required to provide a retirement savings plan, which may be a group RRSP, a pension plan, a multi-employer pension plan or a DC multi-employer pension plan.

b) Auto-enrolment with an opting out option. Every employee would automatically become a member of the retirement savings plan immediately upon becoming employed and would be required to make contributions. On the other hand, employees may opt out of the plan at any time but they would not be entitled to opt out if the plan were subject to the Ontario *Pension Benefits Act* – i.e., pension plans, multi-employer pension plans, or DC multi-employer pension plans.

c) Auto-escalation permitted – The retirement savings plan may provide that members' annual contributions be periodically increased up to a specified maximum rate or amount.

2. Modifications to the Ontario Pension Benefits Act

a) The PBA would be amended to allow the establishment of a new type of defined contribution pension plan: the defined contribution multi-employer pension plan (DC MEPP).

b) The DC MEPP would have the following characteristics:

i. It would be established and administered by an insurer or by a prescribed type of financial institution.

ii. Non-related employers, including sole proprietorships or partnerships, may join the DC MEPP.

iii. Employees of participating employers, including proprietors of sole proprietorships and partners of partnerships, would be eligible to join the DC MEPP.

iv. Employee contributions to the plan would be mandatory, but participating employers would not be required to make contributions.

v. Employer contributions, if any, would be locked-in if the Income Tax Act so provides.

Bill 54 has not been adopted yet and, therefore, is not yet in force.

You can contact us

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legislation.matters@standardlife.ca

www.standardlife.ca

The Standard Life Assurance Company of Canada
Standard Life Assurance Limited

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