Standard Life

Legislation matters

January 2012

The Agreement Respecting Multi-Jurisdictional Pension Plans

In the January 2009 issue of *Legislation matters*, we explained that the Canadian Association of Pension Supervisory Authorities (CAPSA) released a Proposed Agreement Respecting Multi-Jurisdictional Pension Plans (Proposed Agreement) for comment.

The Proposed Agreement had the following objectives:

- To address a number of complex issues with the regulation of pension plans, such as clarifying which legislation applies to a specific matter.
- To establish a clear framework for the regulation of multi-jurisdictional pension plans by applying the rules of the jurisdiction where the plan is registered for matters affecting the entire plan, and the rules of the jurisdiction in which plan members are employed for matters affecting their entitlements.
- To address matters that are not regulated by pension standards legislation, such as the allocation of assets across jurisdictions on plan wind ups, asset transfers and plan liabilities.

The Proposed Agreement has since been finalized by CAPSA and submitted to various jurisdictions in Canada for adoption.

The governments of Ontario and Quebec were the first to sign the Agreement Respecting Multi-Jurisdictional Pension Plans (the Agreement). The Agreement came into effect for these jurisdictions on July 1, 2011.

The federal government and the governments of other provinces and territories are expected to sign the Agreement as soon as possible. Therefore, other bilateral agreements with the federal government and the Memorandum of Reciprocal Agreement initiated in 1968 and signed by all provincial pension regulators with the exception of P.E.I. will remain in effect for jurisdictions that have not yet signed the Agreement.

As of July 1, 2011, the Agreement has applied to pension plans as follows:

- Pension plans registered in Ontario with members in Quebec.
- Pension plans registered in Quebec with members in Ontario.

This means that if a pension plan is registered in Ontario or Quebec and the plan has members in both provinces, the Agreement applies only to members in Ontario and Quebec. If the plan also has members from other jurisdictions, the 1968 multilateral agreement of reciprocity and/or other bilateral agreements with the federal government continue to apply to those members.

Final location

A consequence of the Agreement for Ontario is that, since its coming into effect on July 1, 2011, Ontario has applied the “final location” approach, which means that if a member who has worked for the same employer in different provinces ceases to work, retires or dies while employed in Ontario, for example, his pension benefits would be determined and paid according to the *Pension Benefits Act* of Ontario.

In addition, Ontario’s Pension Benefits Guarantee Fund (PBGF) coverage continues to apply to Ontario members with respect to the benefits they accrued in Ontario. The pension plan administrator must keep a record of all periods of service for members in Ontario to determine their entitlements upon the termination of an underfunded pension plan.

Main regulations of the Agreement

In addition to the “final location” approach, the Agreement stipulates that a pension plan with members who work in more than one jurisdiction must be approved in the jurisdiction where the majority of its active members work (what the Agreement calls the “major authority”). This includes members who have ceased to accrue benefits under the plan.

The *Pension Benefits Act* of the major authority, applies to plan administration, including:

- The registration of a pension plan.
- The registration of an amendment to a pension plan.
- The administration of a pension plan.
- The responsibilities of a pension plan administrator.
- Record keeping for a pension plan and the right of a plan administrator to obtain vital information for its administration.
- The funding of a pension plan, except for a partial or complete termination of one.
- The investments of a pension plan.
- The assets of a pension plan, including the remittance of contributions to the pension fund.
- Information on a pension plan, including annual statements to members (i.e. the form, annual statement content, transmission deadline and statement recipients). This change also applies to all annual statements for members in Ontario and Quebec involving a year-end as of July 1, 2011, or afterward for plans registered in Ontario and Quebec.
- Membership in a pension plan (i.e. the categories of employees covered by a pension plan).
- The power of the oversight body to appoint a pension plan's administrator.

It should be noted that the Agreement is now more accurate, yet as complex, when it comes to the funding rules for defined-benefit pension plans and allocating the assets of a plan between various authorities in certain events, such as a transfer or wind-up. Moreover, it is probably here that the Agreement has the most impact on defined-benefit pension plans subject to more governmental authority.

An update of new rules for marriage breakdown in Ontario

New laws and regulations applicable to the division of pension assets in a marriage breakdown, including the dissolution of a spousal relationship, came into effect on January 1, 2012.

The new rules governing marriage breakdown apply to any spouse whose relationship has been severed — with a court order, a family arbitration award or domestic contract stipulating the division of pension assets between spouses that was made or entered into on or after January 1, 2012.

These new rules do not apply retroactively. Therefore, the old rules continue to apply to a court order, family arbitration award or domestic contract stipulating the division of pension assets between spouses made or entered into prior to January 1, 2012. In such cases, a former spouse of a member in a pension plan will therefore be entitled to receive their share of their pension on the date the pension benefits start to be paid or the normal retirement date under the pension plan, whichever comes first.

The Financial Services Commission of Ontario (FSCO) now requires administrators to use the new FSCO family law forms, based on clearly defined steps. These forms are available on the FSCO website. We have revised and amended our procedures accordingly. For additional information, we invite plan administrators of defined contribution pension plans or of defined contribution components to go on the VIP Room for plan sponsors to get more details on how Standard Life can assist you with the fulfillment of the requirements.

Reminder: Summary of new rules governing marriage breakdown in Ontario

Under the old rules, plan administrators do not have the obligation to calculate the pension benefits subject to division. With the new rules, plan administrators are required to make those calculations and provide the information to the parties involved.

As is the case in Quebec, relevant parties will be entitled to request a marriage breakdown statement from the plan administrator during the separation/divorce proceedings (i.e. before separation or divorce).

Under the old rules, the division of the member's pension benefits could only occur on the date the pension commences to be paid to the member or the normal retirement date under the pension plan, whichever comes first. With the new rules, the division occurs immediately upon the marriage breakdown.

If the member's pension benefits have already started to be paid to them from their defined benefit pension plan at the time of the marriage breakdown, the former spouse is not entitled to transfer out his or her share of the member's pension benefits to a LIRA for example. The member's pension benefits stay in the plan and the former spouse is instead entitled to receive his or her share (% or $ amount) of the member's pension directly from the plan.

If the separation or divorce occurs after the member's retirement under a defined benefit pension plan, the former spouse is entitled to waive 60% of their right to the joint and survivor pension. However, if the former spouse does not waive their entitlement, they are still entitled to the pension of the member.

Under the old rules, the member's pension benefit entitlement could not be reduced by more than 50% of the value of the pension benefit entitlement accrued during the period of marriage or conjugal relationship. The 50% rule continues to apply under the new rules.

Maximum contributions and benefits for 2012

In the fall, the Canada Revenue Agency (CRA) announced the maximum contributions and benefits for 2012 retirement savings plans as follows:

- Defined contribution pension plans – The maximum contribution is increased from $22,970 in 2011 to $23,820 in 2012.
- DPSP – The maximum contribution is increased from $11,485 in 2011 to $11,910 in 2012.
- RRSPs – The maximum contribution is increased from $22,450 in 2011 to $22,970 in 2012.
- Defined benefit pension plans – The maximum benefit per year of credited service is increased from $2,552.22 in 2011 to $2,646.67 in 2012.
- Tax-Free Savings Account – The maximum contribution remains at $5,000 for 2012.

The Yearly Maximum Pensionable Earnings (YMPE) under the Canada Pension Plan will increase from $48,300 in 2011 to $50,100 in 2012. The YMPE under the Quebec Pension Plan will also increase from $48,300 in 2011 to $50,100 in 2012.

Other developments

The introduction of Bill C-25 this past fall established the framework for Pooled Registered Pension Plans (PRPP) applicable to all employees of companies regulated by federal legislation, self-employed workers and proposed tax rules. The introduction of the bill also brought new pension legislation and new guidelines from the Canadian Association of Pension Supervisory Authorities (CAPSA). Below is a summary.

For more information on PRPPs, please refer to the special November and December 2011 issues of *Legislation matters*.

Quebec

On November 30, 2011, the National Assembly adopted Bill 42, entitled *An Act to amend the Supplemental Pension Plans Act*. The Act's purpose was to prolong certain measures already in place to mitigate the effects of the 2008 financial crisis on pension plans covered by the Act. The following two measures, which will soon be defined by regulation, are to be extended to December 31, 2013:

- Options for payment in the event of insufficient assets, including the choice to administer the pension through the Régie des rentes, in accordance with the same terms as those applicable until December 31, 2011; and
- The stipulation that the pensions of retirees who have chosen a pension paid by the Régie des rentes will not be lower than they would have received in the absence of relief measures, assuming their employer used relief measures before becoming insolvent.

In addition, the Régie des rentes du Québec has formed a committee of independent experts to focus discussions on the characteristics of a possible viable and efficient pension system that would meet the future needs of Quebecers. Their findings will be provided to the Régie by the end of 2012.

New Brunswick

In the July 2011 issue of *Legislation matters*, we informed you that the New Brunswick government implemented Bill 16 in June, which amending the N.B. *Pension Benefits Act*. However, it had not yet come into effect at that time.

The New Brunswick government proclaimed October 1, 2011 as the date it and Bill 31 come into force. The Regulations under the PBA have also been amended accordingly and have come into effect on October 1, 2011. With these changes, New Brunswick is modernizing the definitions of "common-law partners", and is recognizing same sex couples in its *Pension Benefits Act*.

A representative of the New Brunswick Office of the Superintendent of Pensions informed us that it expects pension plan documentation to be modified on or before December 31, 2012. The official date for changes that will have to be made to the plans will be confirmed later.

Nova Scotia

The Nova Scotia government tabled Bill 96, which introduces a new law on pension plans and replaces the current Act. Bill 96 has been passed in December 2011. However, it is not yet in effect; it will come into effect by proclamation by the Nova Scotia government. This new legislation will stipulate, among other things, rules for immediate vesting and death benefits before retirement that are different than those currently applicable. In addition, it will introduce new types of pension plans, such as Target Benefit Pension Plans.

In addition, on December 8, 2011, the Nova Scotia's Superintendent of Pensions, Mrs. Nancy MacNeill Smith, released draft pension funding regulations applicable to defined benefit pension plans for consultation purposes. The consultation period runs to January 31, 2012.

New CAPSA guidelines

On November 15, 2011, CAPSA released the following two guidelines in order to further develop CAPSA Guideline No. 4 on the Pension Plan Governance Guidelines and Self-Assessment Questionnaire:

- Guideline No. 6 on the Pension Plan Prudent Investment Practices and Self-Assessment Questionnaire on Prudent Investment Practices.
- Guideline No. 7 on the Pension Plan Funding Policy.

Guideline No. 6

This guideline applies to defined benefit and defined contribution pension plans – or a combination of the two – as well as multi-employer pension plans.

The guideline aims to provide guidance to plan administrators on how to demonstrate the application of prudence in the investment of pension plan assets.

The questionnaire is designed to help the plan administrator by indicating the topics he must consider when reviewing investment functions and practices.

Guideline No. 7

This guideline applies to defined benefit pension plans and aims to provide guidance on the development and adoption of funding policies for pension plans that provide defined benefits.

As CAPSA explained in its letter to pension plan industry stakeholders, "the Guidelines reflect the expectations of pension regulators regarding the adoption by pension plan administrators of prudent investment practices and funding policies. They are intended to support the continuous development and improvement of industry practices."

These guidelines are available on the CAPSA website.

