Standard Life

Legislation Matters
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Administrative Reminder

The new Alberta Employment Pension Plans Act and Regulation came into effect on September 1, 2014. The Regulation prescribes the default fund options that are acceptable for a pension plan registered in Alberta or for Alberta members in a pension plan registered in another province. The options include either a balanced fund or a portfolio of investments that take a member's age into account (such as an Avenue Portfolio or a Target Date Fund). Plan administrators with Alberta members are expected to ensure that the default fund for their plan complies with the new legislation.

Erratum

In Legislation Matters of January 2015, it was indicated that the former and retired members in Ontario would receive a new annual statement. The new statement for former and retired members is provided on a biennial basis (once every two years), not on an annual basis. Participating members will continue to receive their annual statement.

Federal

Budget 2015

The Federal Minister of Finance tabled its 2015 Budget on April 21, 2015. Out of many announcements, two have a more direct impact on retirement.

Tax Free Savings Account

The annual contribution limit for the Tax Free Savings Account (or TFSA) has been increased from the current $5,500 to $10,000 for the year 2015 and subsequent taxation years. This new annual contribution limit will no longer be indexed to inflation.

This announcement takes effect immediately so investors can benefit from the increased contribution limit this year.

Reduction of the minimum withdrawal factors for Registered Retirement Income Fund (RRIF)

As required by the Income Tax Act, registered pension plans (RPP) and registered retirement savings plans (RRSP) must be converted into a retirement income vehicle by the end of the year in which the holder turns 71. More specifically, RRSP holders must convert their RRSP into a RRIF (unless they purchase an annuity) by the end of the year they turn 71 and a minimum amount must be withdrawn the year the RRIF is established.

Prior to the 2015 Budget announcement, the minimum withdrawal factor for age 71 was 7.38%, which means that the minimum amount that had to be withdrawn for that year was 7.38% of the assets in the RRIF. The withdrawal factor increases with age until it is capped at 20% at age 94. Each year after 94, the mandatory minimum withdrawal factor remains at 20%. Following the 2015 Budget announcement, the minimum withdrawal factor at age 71 has been lowered to 5.28%, capping at 20% at age 95.

This tax measure applies to the current and subsequent years.

Regulation amendments to the PBSA

The federal government has adopted amendments to the Pension Benefits Standards Regulation. Some of the amendments came into force on April 1, 2015, but they are of a technical nature, such as translation corrections, and the inclusion of the PRPP as a transfer option for pension plan assets in unlocking situations. These changes should have little to no impact on the daily activities of plan administrators.

The amendments below are coming into force on July 1, 2016, unless otherwise indicated. Here is a summary of the changes:

- **Member choice accounts:** For plans that allow members to make investment decisions (i.e. DC plans), the administrator will now need to provide to members annually :
  - A description for each investment option that is made available to the member under his pension plan (i.e. not limited to the options chosen by the member) that includes the following information: the investment objective, the type of investment and risk category, the top 10 holdings, the performance history, the benchmark, the fees and charges, and the target asset allocation
  - A description of how the member's account is currently invested
  - An indication of the timing for making an investment choice.
- **Variable benefit (came into force on April 1, 2015):** In 2010 the Pension Benefits Standards Act, 1985 was amended to allow for the payment of variable benefits directly from a DC plan, instead of the purchase of an annuity or the transfer to a LIF. The amendments prescribe the parameters of this variable benefit including the minimum annual payment (as determined by the *Income Tax Act*) and the maximum annual payment, as calculated, until the member is 90 years old. No maximum is prescribed over 90.

- **Information for plan members:**
  - Annual Statement for plans other than DC plans (DB plans and others) : the following information must now also be included on a member statement (similar information on the former member or former member's spouse statement must also be included):
    - a) the total value of solvency assets and solvency liabilities of the plan
    - b) the total employer payments made to the plan during the year
    - c) the top 10 holdings each expressed as a percentage of total assets
    - d) the target asset allocation expressed as a percentage of total assets
    - e) for negotiated contribution plans: a description of the funding arrangement including an indication that benefits may need to be reduced if plans fail to meet solvency standards.
- **Electronic Communications:** The Regulation was amended to include a protocol to provide information pursuant to the Act in electronic format. This includes the ability to provide information presented in accordance with the Act in a document that can now be satisfied in electronic format, subject to the communication protocol. The protocol requires the consent of the person that will receive electronic communications, and such consent can be withdrawn at any time.
- **Modernisation of the investment rules and changes to the concentration limit:** The regulation is amended to modernise the language used in the investment rules for pension plans. In addition, the investment rules now prohibit from investing or lending more than 10 percent of the total value of the plan assets in a single entity. This concentration limit is now based on the market value of the assets, not the book value, and applies to the aggregate value of debt and equity in an entity. For DC plans, the concentration level is calculated at the member level, and excludes investment fund and segregated fund holdings. Because a similar concentration restriction and the related exclusion for investment funds and segregated funds existed prior to the modernisation, we expect that our DC clients will continue to still be compliant.

  The rules now also prohibit the investment in a related party to the pension plan (such as the employer), unless the investment is held in an investment fund or segregated fund. If an investment in a related party exists on July 1, 2016, there is a 5 year transition period to correct the situation (the same 5 year period applies if an investment in a related party occurs following a transaction).

As a correlation to the new obligation to prepare disclosure information for Member Choice Accounts, the amendments have removed the obligation to prepare a Statement of Investment Policies and Procedures (SIPP) for DC plans.

Although this change appears to remove the obligation to prepare a SIPP in Ontario, because the federal regulation is integrated by reference in the Ontario regulation (see section 78 of the *Ontario Pension Benefits Act R.R.O. 1990, Regulation 909*), the Financial Services Commission of Ontario has issued a notice which confirms that it still expects SIPP to be prepared in Ontario, including as it relates to the new content for environmental, social and governance factors beginning on January 1, 2016.

Changes to the plan registration process with the Canada Revenue Agency

Starting in April 2015, the Canada Revenue Agency's ("CRA") process for registration of pension plans will be changed to address the evolution of submissions received by CRA. The new review process intends to move to a case-based, cyclical and risk-based review of all plans.

Under this new process, all plans will be subject to a full review at least once every six years. A full review will occur more regularly if a risk trigger occurs. CRA will consider the following as risk triggers for a full review:

- A change in the status of the plan
- The risk of non-compliance
- The need to coordinate with other areas of the Registered Plans Directorate of the CRA or any other areas of the CRA
- The review cycle has ended and the plan must be reviewed.

The first full review will occur upon the initial filing. The plan will be subject to a review that will ensure that it fully complies with the Act. This includes the plan terms, the funding and other elements of administration of the plan. Once the full review is completed and all comments are addressed, the CRA will issue its letter of confirmation and the six year review cycle begins.

Any amendments that won't be considered as risk triggers in the course of the six year cycle won't be reviewed until the next full review but the filings will be considered as part of the plan upon filing. CRA will continue to review amendments or draft plan terms upon request from the plan administrator and will also maintain its service standards for waivers, administrative relief, written enquiries and validations of earnings and service.

Alberta

Budget 2015

In its 2015 Budget, the provincial government of Alberta adopted a measure that will see changes to the insurance premium tax. This change will take effect on April 1, 2016 and will see the insurance premium tax for life and accident and sickness insurance increase from 2% to 3%. In the absence of any indication to the contrary, this change will affect both new and existing policies.

Nova Scotia

Hospitals Act – Nurse Practitioner

In March 2015, the government of Nova Scotia adopted amendments to the Hospitals Act that will allow nurse practitioners to discharge patients from hospitals.

Until the amendments, nurse practitioners could assess and treat various patients, but those patients had to wait for the visit of a physician before they could be discharged from the hospital (midwives and dentists also have such authority). This change aligns Nova Scotia with other jurisdictions that have adopted similar authority for nurse practitioners. Some patients can therefore expect a more efficient treatment process as this change is implemented at various sites in Nova Scotia over time.

The Pension Benefits Act

In December 2011 (see the January 2012 Legislation Matters), the Government of Nova Scotia adopted a new Pension Benefits Act (Bill 96 or the "New Act") which was not put into effect until the new regulation was ready. On April 21, 2015, an Order in Council was presented by the Government of Nova Scotia to enact the New Act as of June 1, 2015 and to introduce the new regulation.

Among the new measures, the following are noteworthy:

- Immediate vesting and locking-in
- Changes to the small amount rule in the year of termination
- Introduction of phased retirement for DB pension plans
- Changes to the definition of spouse (including the recognition of same sex spouses)
- Changes to the Pre-Retirement Death Benefits minimum standards
- Premium Delinquency reporting .

We will review new obligations imposed by the New Act or its regulation and report on them in a future edition of Legislation Matters.

Ontario

Budget 2015

On April 23, 2015, the Ontario Government tabled its 2015 Budget. Of the many announcements, the government reiterated its intention to adopt the Ontario Retirement Pension Plan (ORPP) in 2017 and introduced legislation to create the independent organization that will manage the ORPP, the Ontario Retirement Pension Plan Administration Corporation.

The ORPP has attracted approximately 1,000 comments letters from various stakeholders which are still being considered by the Ontario Government. Many expect that the extensive feedback received by the government will result in changes to the current scope proposed for the ORPP to effectively allow for a broader range of capital accumulation plans to be considered as comparable plans. As such, it would have the effect of exempting a broader group of employees and employers from the ORPP.

Buy-in annuities

In February, the Financial Services Commission ("FSCO") issued guidance (IGN-001) relating to buy-in annuities for defined benefit plans. FSCO mentions a few items that must be considered by plan administrators before investing DB plan assets in a buy-in annuity including:

- The plan's statement of investment policies and procedures that must explicitly permit such investment in a buy-in annuity
- A competitive bidding or multiple quotes for the pricing of the buy-in annuity to avoid relying solely on the pricing and transaction costs from one insurer
- The counterparty risk (will the insurer be able to fulfill the term of the buy-annuity?) that may require the review of the insurer's financial health, credit ratings and governance practices
- Assuris' coverage for the buy-in annuity and the contractual terms as they relate to future changes in coverage from Assuris (including the possibility to separate the investment amongst multiple insurers)
- The general contractual terms of the buy-in annuity to cover plan circumstances as they evolve over time (portability, early retirement, pre-retirement death benefits, spousal transfer, etc)
- Additional due diligence if the buy-in annuity is purchased from an insurer that is not authorized to carry on life insurance business in Canada (foreign insurer).

The administrator must demand clear termination rights on wind up of the plan and valuation method for settlement value. The guidance also provides for treatment of the buy-in annuity for Actuarial Funding Valuation Reports and Financial Statements.

The Heringer Decision

On December 17, 2014, Justice Fregeau of the Ontario Superior Court rendered the Heringer decision (Heringer v. Heringer, 2014 ONSC 7291). As a result of a settlement on appeal of the decision, the Superior Court decision is now the law of the land in Ontario.

The decision relates to the right of a former spouse of a pension plan member to receive the payment of interest on his or her share of the Family Law Value upon a lump sum transfer pursuant to section 67.3 of the *Pension Benefits Act* (the "Act"). Justice Fregeau concluded that plan administrators have no inherent authority to decide for the payment of interest.

As a result, plan administrators, when making lump sum transfers in Ontario for Family Law Value pursuant to a court order, family arbitration or a domestic contract (together referred to as "settlement instrument"), should follow the following guidance:

- If the settlement instrument provides for the payment of a settlement amount without any indication relating to interest: transfer of the settlement amount
- If the settlement instrument provides for the payment of a settlement amount with an indication to adjust for interest: transfer of the settlement amount plus any accrued interest on the amount since the Family Law Value evaluation
- If the settlement instrument provides for the payment of a percentage of the Family Law Value: interests should be included in the amount paid.

The decision applies to the parties that are subject to the family law rules of the Act that came into effect on January 1, 2012 (i.e. the settlement instrument was made on or after January 1, 2012).

College of Registered Psychotherapists and Registered Mental Health Therapists of Ontario

On April 1, 2015, the Ontario Psychotherapy Act, 2007 came into force which resulted in the creation of the College of Registered Psychotherapists and Registered Mental Health Therapists of Ontario (the "College"). Anyone who wishes to use the title "psychotherapist" or who holds himself or herself out as qualified to practise as a psychotherapist in Ontario will need to register with the College.

There is a transitional period of two years, until March 31, 2017, for existing practitioners to register with the College.

This proclamation of the Act did not however include the coming into force of the provision relating to the authorized act for psychotherapists. Further study will be conducted to determine the impact on the activities in the mental health industry before this provision is proclaimed.

Quebec

Extension for the distribution of VRSP

In February 2015, the government issued an order concerning the distribution of VRSP in Quebec. The order allows financial security advisors and group insurance representatives authorized to offer group insurance to distribute VRSP to employers in Quebec until December 31, 2017. Until the order was issued that distribution was only allowed until January 1, 2016.

The Autorité des marchés financiers ("AMF") also provided some guidance as to their interpretation of activities that may be conducted by representatives (who would not otherwise be authorized to offer or advise on VRSP) from January 1, 2018 onward. Financial security advisors and group insurance representatives authorized to offer group insurance will therefore be able to perform administrative services (and in all likelihood be paid a commission to do so) that include the non-exhaustive following list:

- Maintaining and updating client (employer) records
- Maintaining and updating participants records
- Production and transmission of statements and other VRSP related documents
- Changes in contribution level or other types of participation by the employer and/or participants
- Production of financial reports and reports on funds.

Amendments to the Quebec Supplemental Pension Plans Act

On April 2, 2015, the *Quebec government adopted An Act to amend the Supplemental Pension Plans Act with respect to the funding and restructuring of certain multi-employer pension plans* ("Bill 34") to address the funding of multi-employer pension plans ("MEPP"). Bill 34 has a retroactive effect from December 31, 2014.

Bill 34 intends to address the contributions, the benefits and the funding of pension plans that cannot be unilaterally amended by a participating employer to ensure that they don't remain in funding deficiency for a prolonged period. Recovery plans filed with the Régie des rentes du Québec will ensure that MEPP will be restructured to address funding deficiencies, whether this restructuring provides for increased employer contributions, increased member contributions and/or a reduction of accrued benefits.

Solvency ratio of the MEPP will affect the value of accrued benefits for members but cannot affect the value of benefits in pay more than the value for active members, nor can it affect benefits already paid.

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