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Special Edition

British Columbia Pension Benefits Standard Act and Nova Scotia Pension Benefits Act

British-Columbia - *Pension Benefits Standards Act*

On May 11, 2015, the new *Pension Benefits Standards Regulation* (the Regulation) was approved by the government of British Columbia. The Regulation supports the new Pension Benefits Standards Act adopted in 2012 (subsequently modified in 2014) (the Act). The government has proclaimed that the Act and the Regulation will take effect on September 30, 2015.

The Act and Regulation touch on various aspects of legislation including vesting and locking-in, disclosure, governance, funding, plan design, record retention, survivor benefits, enforcement, fees and more. Furthermore, British Columbia is transferring the adjudication of financial hardship unlocking withdrawal requests under the LIRAs and LIFs to the financial institutions that administer the accounts.

Pension plan amendments must be filed to comply with the new requirements of the Act before January 1, 2016, however, pension plans must be administered in accordance with the Act beginning on September 30, 2015.

Key features of the new Act and Regulations are:

- ▶ A plan sponsor can auto-enroll eligible employees, with an option for the employee to opt out, as a term and condition of employment when an employer offers a pension plan and elects this feature for the plan
 - ▶ The concept of “prescribed class” has been removed such that employees in an eligible class determined by the plan sponsor who meet the conditions for membership set out in the plan and who earn at least 35% of the Years Maximum Pensionable Earnings (YMPE) over a two year period must be permitted to join the plan
 - ▶ Immediate vesting of plan benefits for all years of service/ plan membership
 - ▶ Locking-in will be based on a dollar threshold amount equal to 20% of the YMPE regardless of the length of time it takes to accrue that amount of benefit. The “small benefit” test is now obsolete
- ▶ For plans where members must provide direction regarding the investment of their accounts there is a new requirement that the default investment option must be either a balanced fund or portfolio of investments that takes into account a member’s age. This new default option must be implemented before June 28, 2016
 - ▶ LIF-like monthly retirement income payments from the pension plan can be provided to members, if the plan allows for it
 - ▶ Pre-retirement survivor benefits are amended to entitle the deceased member’s spouse to the commencement of an immediate pension from the plan, regardless of the spouse’s age. However, a plan administrator may still require the spouse to choose a portability option instead
 - ▶ Plan administrators may now include provisions in the plan text to force out members upon termination of active membership or the surviving spouse upon the member’s death
 - ▶ New disclosure information and additional statements to be provided for specific situations
 - ▶ New mandatory provisions to the pension plan text for unlocking due to shortened life expectancy and non-residency
 - ▶ New spousal waiver forms have been created
 - ▶ Plan sponsors will be required to establish a written plan governance policy
 - ▶ Plan administrators will be required to complete a written assessment of the plan triennially
 - ▶ Plan administrators are to provide Fund holders with a Schedule of Expected Contributions within 30 days of the registration of a plan, within 30 days after the beginning of each fiscal year of the plan and within 30 days within the occurrence of a material change to the contributions. All pension plans, other than Collectively Bargained Multiemployers Pension Plans must provide the Fund holders with an updated Schedule of Expected Contributions before October 30, 2015

- ▶ Partial plan termination and the requirement to file a partial plan termination report are eliminated
- ▶ Audited financial statements are no longer required for defined contribution pension plans. However, Collectively Bargained Multi-employer plans must file audited financial statements regardless of plan type or value of plan assets
- ▶ The Act requires that participation agreements for Non-Collectively Bargained Multi-Employer Plans (NCBMEPs) must be in place by January 1, 2016
- ▶ The Act requires the plan administrator to retain the records or a copy of the records of the pension plan in Canada and adopt a record retention policy in that regard no later than the beginning of the plan fiscal year after the fiscal year in which September 30, 2015 falls (for example, the plan administrator will need to adopt a record retention policy no later than January 1, 2016 for plan with a fiscal year ending on December 31). The Superintendent will publish requirements for record retention policies.

Other features of the new Act and Regulations specific to Defined Benefit Plans:

- ▶ Flexible pension plan design including the possibility to establish Target Benefit provisions and Jointly-sponsored Pension Plans
- ▶ The option for a defined benefit plan to create a solvency reserve account for purposes of holding solvency deficiency payments (and accumulated interest) which are intended to amortize solvency deficiencies
- ▶ Restrictions regarding the use of going concern surplus (no more than 20% of the plan's accessible going concern excess as determined under legislation) shall be available for the reduction or elimination of contributions in any fiscal year
- ▶ Where the balance of a transfer deficiency is to be paid that would materially impact plan solvency, it can be delayed with the Superintendent's consent
- ▶ Rules around the withdrawal of actuarial excess or surplus in a defined benefit plan have been revised and new rules about the allocation of Excess Member Contributions have been added
- ▶ The threshold for filing an audited financial statement for a defined benefit pension plan has been maintained at \$10 million of assets but the filing deadline has been reduced from 270 days to 180 days after the end of the plan's fiscal year
- ▶ Plan sponsors of defined benefit plans will be required to establish a written funding policy

Nova-Scotia - The Pension Benefits Act

As mentioned in the May 2015 edition of Legislation Matters, in December 2011, the Government of Nova Scotia adopted a new *Pension Benefits Act* (Bill 96 or the "Act") which was not put into effect until the regulation was ready. On April 21, 2015, Orders in Council were presented by the Government of Nova Scotia to enact the Act as of June 1, 2015 and to introduce the new regulation (the "Regulation").

Pension plan amendments must be filed to comply with the new requirements of the Act before June 1, 2018, however, pension plans must be administered in accordance with the Act beginning on June 1, 2015.

Changes that are taking effect on June 1, 2015

Immediate vesting and locking in

Evolution of the vesting of pension benefits is complete with the new requirement that immediately vest pension benefits when pension plan members terminate their employment. Starting on June 1, 2015, there will no longer be a requirement that pension plan members have 24 months of continuous membership in the pension plan to vest pension benefits.

For long standing members of the pension plan, it should be noted that benefits for employment before January 1, 1988 accrue as a deferred pension equal to the pension benefit provided under the pension plan as it existed on December 31, 1987.

Unlocking

1. Changes to the unlocking for small amounts

The threshold in the Act increases from 10% to 20% of the Year's Maximum Pensionable Earnings (YMPE) the commuted value of a pension benefit that can be unlocked in the year that the former members or retired members terminated employment. The Act however maintains unlocking based on the annual benefit payable at normal retirement age that is not more than 4% of the YMPE.

2. Shortened life expectancy

The Act provides for changes to the ability to obtain locked-in money from a pension plan (including from a LIF or a LIRA) in cases where owners have a physical or mental disability that is likely to shorten their life expectancy. While it was previously required to obtain a statement from a physician in regards to the expectation of a considerable shortened life expectancy, the Regulation requires the physician to qualify this shortened life expectancy to less than 2 years. Spousal consent is required, when applicable.

3. Non-residents of Canada

Where the provisions of a LIF or LIRA provide for it, an owner of a LIF or LIRA may withdraw all or part of the money in those plans because he or she is no longer a resident of Canada. This application can be approved if the owner is a non-resident of Canada for the purposes of the federal *Income Tax Act* and the application is made at least 24 months after the owner departed from Canada. Spousal consent is required, when applicable.

New types of pension plans

Although not new in the pension industry in Canada, the Act introduces two new types of pension plans to Nova Scotia. Jointly sponsored pension plans and Target Benefit pension plans are adopted in Nova Scotia. It should be noted that the sections of the Act relating to Target Benefit pension plans are not yet proclaimed and therefore plan sponsors will have to wait a while longer before creating this type of plan.

Electronic Communications

The Act provides that the administrator of a pension plan may provide documents in an electronic format to members, former members, retired members or any other persons entitled to benefits under the pension plan. The administrator must first obtain the permission from the person to whom it intends to provide electronic documents to. The Act provides specifically that notices, statements and other records can be provided electronically.

Notice of plan amendments

Previously when making amendments to their plan text, whether the amendment was adversely affecting any person entitled to payments from the pension fund, whether the amendment was technical in nature or whether the amendment was not substantially affecting pension benefits, rights or obligations of members, former members or retired members, plan sponsors had to obtain an order from the Superintendent regarding the notice to be provided.

The Act has now removed the obligation for the intervention of the Superintendent in the amendment process, other than for the registration of such amendment. Pursuant to the Act, the notice advising of the amendment, in cases mentioned above, must be given no later than 6 months after the amendment is registered with the Superintendent. In cases not mentioned above, such as when the amendment has an adverse effect on members, former members or retired members, the notice must be given at least 45 days before the amendment is filed with the Superintendent.

In all cases, the notice must include a notice that the amendment has been made, a summary and explanation of the amendment and the administrator's contact information.

Record retention policy

The Act provides for specific requirements for record retention by plan sponsors (or any other person who is in possession or control of records). Records are defined broadly to include accounts, books, files, returns, statements, financial documents or other memorandums of financial or non-financial information. Records also include the results of recording of details of electronic data processing systems and programs to illustrate what the systems and programs do and how they operate. The retention period is for 7 years which can be satisfied electronically as long as the electronic records accurately represent the original record, are accessible as to be usable and, if the document was sent or received, information as to its origin and destination and the date and time it was sent or received. The timer for the 7 year period begins at different times depending on the nature of the related record but the triggers are fairly intuitive.

For example, the 7 years period for a plan benefit begins on the latter of the date the benefit is paid in full or the date the entitlement to the benefit is extinguished.

Disclosure for annual statements

The Act provides for additional disclosure on the annual statements of members. This additional disclosure includes:

- ▶ a description of benefits provided on member's death other than the statutory death benefits
- ▶ the plan's transfer ratio and an explanation how the transfer ratio relates to the funding of members' benefits
- ▶ if special payments are being made, a statement that special payments are being made to liquidate an unfunded liability or solvency deficiency
- ▶ if there is a solvency deficiency, a statement as to whether the employer has provided a letter of credit instead of making payments in relation to the solvency deficiency
- ▶ if the plan is exempt from the requirement to fund a solvency deficiency, a statement to that effect and the dates for beginning and end of the exemption period
- ▶ a statement setting out the treatment of any surplus in a continuing plan or on wind-up
- ▶ if an explanation was not previously provided, an explanation of any amendments affecting the member that were made during the period
- ▶ for multi-employer pension plans and defined benefit plans under which the employer is only required to contribute a fixed amount, a statement that the member's benefits may be reduced if assets are not sufficient to meet the liabilities of the plan on wind-up.

Premium delinquency reporting

The Act provides that the administrator or agent of the administrator who is responsible for receiving contributions under the pension plan must notify the Superintendent when owed contributions are not paid. This notice to the Superintendent must be sent no later than 60 days after the date a contribution became due but is not paid.

Summary of pension contributions

The administrator must provide the pension plan's trustee with a summary of pension contributions. The document must be provided no later than 90 days from the establishment of the pension plan, and annually no later than 60 days after each fiscal year end. Upon changes to the summary of pension contributions, the document must also be provided within 60 days of the administrator awareness of such changes.

Where the administrator fails to provide the pension plan's trustee with the summary of pension contributions, the trustee must advise the Superintendent no later than 30 days after it was required to be submitted.

Definitions

The Act provides for new or amended definitions. Among those definitions, two are of particular interest:

The retired member definition has been added and a distinction must be made with individuals who qualify as former members. Previously both former members and retired members were included under the definition of former member.

► **Retired member** means an individual who has either terminated employment that relates to a pension plan or has terminated membership in a pension plan and satisfies one or more of the following criteria:

- (i) the individual is receiving a pension payable from the pension fund,
- (ii) the individual is entitled to begin to receive a pension from the pension fund by virtue of having reached the normal retirement age under the pension plan, even though the individual has not yet elected to receive the pension,
- (iii) the individual has elected, under subsection 60(1) [*former member who has terminated employment and is within 10 years of normal retirement age*], to receive an early retirement pension, or
- (iv) the individual has elected, under the terms of the pension plan, to begin payment of a pension payable from the pension fund, whether or not receipt of the first payment of the pension is deferred until a later date,

but does not include an individual who was a member and who has transferred an amount under Section 61 of the Act [*i.e. a former member who transfers the commuted value of the former member's deferred pension to another pension plan, a retirement savings arrangement or for the purchase of an annuity*] in connection with the pension plan.

The definition of spouse has been updated to include domestic partners (replacing the common-law partner concept, which definition was repealed) and persons who are not married but live in a conjugal relationship (the period of the required conjugal relationship will be affected by the fact that one of the persons is currently married to a third person).

► **Spouse** means either of two persons who

- (i) are married to each other,
- (ii) are married to each other by a marriage that is voidable and has not been annulled by a declaration of nullity,
- (iii) have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or, where they have ceased to cohabit, have cohabited within the twelve-month period immediately preceding the date of entitlement,
- (iv) are domestic partners within the meaning of Section 52 of the Vital Statistics Act, or
- (v) not being married to each other, cohabited in a conjugal relationship with each other
 - (A) for a period of at least three years, if either of them is married, or
 - (B) for a period of at least one year, if neither of them is married.

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