Manulife

Legislation Matters

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1. Proposal for pension benefits legislation

Provincial governments have been busy in 2014 with a number of proposals affecting pension benefits legislation. The following is a summary of what's been happening in recent months.

Alberta

Changes to the Alberta *Employment Pension Plans Act* and Regulation received Royal Assent and the legislation became effective on September 1, 2014 [see Legislation Matters of August 2014 for more details].

Plan administrators are required to administer their pension plan in accordance with requirements of the new legislation. Although plan administrators were originally directed to amend their pension plan texts by December 31, 2014, on December 18, 2014, the government of Alberta published amendments to the *Employment Pension Plans Regulations* (the "December 18 amendments") that postponed the delay until June 30, 2015. Plan administrators who obtained an extension for the filing of the required plan amendments until March 31, 2015 are automatically extended until June 30, 2015. In a corresponding fashion, the obligation to establish a new default fund by December 31, 2014 is also postponed to June 30, 2015 and any contributions to the current default fund will not need to be transferred to the new default fund once it is established.

The December 18 amendments include other noteworthy changes to the regulations. The obligation to assess the administration of the pension plan is changed from once a year to once every three years. The obligation to provide fundholders with a new summary of contributions is modified so that most pension plans will only need to provide it for the period of January 1 to December 31, 2015. With the termination of the National Search Unit of Service Canada, the obligation to use it was correspondingly removed from the regulation. Pension plans that are supplemental to a plan governed by the *Public Sector Pension Plans Act* may use the marriage breakdown provisions of that act to that effect.

Finally, the December 18 amendments establish a new moratorium on solvency funding for Collectively Bargained Multi-Employer Plans (CBMEP). CBMEP that want to take advantage of the new moratorium beginning on January 1, 2015 must apply to the Superintendent of pension for an exemption from the solvency funding. In such cases, an actuarial evaluation will be due by September 30, 2015 for most CBMEP. It should be noted that the new moratorium does not have a pre-determined expiry date.

Pension plans with Alberta members that are registered under a provincial jurisdiction other than Alberta are also subject to Alberta legislation and the regulation of the plan in accordance with the provisions of the applicable provincial multilateral jurisdictional agreements that are currently in effect across Canada.

In addition, Alberta has introduced the *Pooled Registered Pension Plans Act* which will make Pooled Registered Pension Plans ("PRPP") a reality in Alberta. However, the PRPP Regulations have not been published and the legislation continues to await proclamation before it comes into effect.

British Columbia

We are one step closer to getting a PRPP environment in British Columbia. Bill 9 obtained Royal Assent in Parliament on May 29, 2014. Bill 9 adopts the general structure of the Federal PRPP with the appropriate changes to reflect specific provincial requirements. It will come into force by regulation of the Lieutenant Governor in Council.

The *Pension Benefits Standards Amendment Act* (Bill 10) also obtained Royal Assent in Parliament on May 29, 2014. Bill 10 amends Bill 38 that was adopted back in 2012 following a review of the minimum pension benefits standards under the BC *Pension Benefits Standards Act*. The revision to the BC PBSA has yet to come in force.

Bill 38, together with Bill 10, creates a legislative environment mirroring the one recently adopted in Alberta [see Legislation Matters of August 2014 for more details].

Nova Scotia

On November 20, 2014 Nova Scotia adopted PRPP legislation that will come in force by proclamation of the Governor in Council. Instead of adopting its own set of legislation for PRPP, Nova Scotia, like BC, decided to adopt legislation that mirrors the federal PRPP legislation.

Ontario

The latest province to introduce legislation to adopt PRPP is Ontario. On December 8, 2014 the Ontario legislature passed the first reading for Bill 57. Similar to BC and Nova Scotia, Ontario adopted the structure of the Federal PRPP.

PRPP legislation will provide a retirement option for employees who do not currently have access to an employer sponsored pension plan and also for individuals who are self-employed.

2. Changes to the Federal Pension Benefits Standards Act and regulations

Disclosure to members and former members

Changes to the regulation were published to support previously adopted changes to the Act, but have yet to be approved by the Governor in Council. In addition to previously required information, the annual statement to members and their spouse (including common-law partners) will need to include the following new items:

- the valuation date of the most recent actuarial report along with the date of the next required actuarial report;
- the value of solvency assets and solvency liabilities of the plan on the valuation date;
- the employer payments made to the plan for the year;
- a list of pension fund's 10 largest asset holding based on market value;
- the pension fund's asset allocation expressed as a percentage of total assets.

Former members and their spouse (including common law partner) must also receive an annual statement within 6 months of the end of the fiscal year of the plan. The information to be provided will vary depending on the type of plan.

Member choice accounts

In cases where members are permitted to make investment choices under their plan, a written statement must be provided to members which will describe for each option:

- the investment objective;
- the type of investment and risk category;
- the top 10 holdings by market value;
- the performance history;
- an indication that past performance is not necessarily an indication of future performance;
- the comparable benchmark;
- the fees and other charges that reduce the return on investment (as a percentage or fixed amount); and
- the target asset allocation.

New concentration restrictions

Some technical changes have been proposed to modify the concentration restrictions for pension plans. The concentration limit would remain at 10% of the plan assets but it would be determined based on market value of the securities instead of their book value. Changes also include additional clarity specifying that the percentage encompasses the aggregate of both debt and equity securities of the entity.

For DC plans, the concentration would be calculated at the member level, not the plan level, and would carve out any investment fund and segregated funds holding related to member choices.

3. Changes to the obligations for plan administrators in Ontario

The Ontario government has just enacted a series of changes to the *Pension Benefits Regulation* that will have an impact on the obligations of plan administrators going forward.

Starting on January 1, 2016, the pension plan administrators will have to prepare a statement of investment policies and procedures that will contain:

- the investment policies and procedures in respect of the plan's portfolio of investments and loans; and
- information about whether environment, social and governance factors are incorporated in the investment policies and procedures and how they are incorporated.

In addition, the statement of investment policies and procedures must now be filed with the Financial Services Commission of Ontario within 60 days of the plan's fiscal year end.

Plan administrators will also need to provide their former members and retired members with a new annual statement that will provide information prescribed by regulation. For plans registered before January 2015, the first statement must be issued no later than July 1, 2017.

4. New unlocking provisions in Saskatchewan

On December 3, 2014, the Saskatchewan government adopted changes to the *Pension Benefits Regulation*. The changes provide for a person entitled to a benefit under a Saskatchewan pension plan to unlock the commuted value of that benefit when the person is no longer a resident of Canada. It does not however apply to an active member. Among the conditions required to allow for the unlocking of the commuted value, the person must:

- be a "non-resident" as determined for the purpose of the *Income Tax Act*;
- not have resided in Canada for at least two consecutive years;
- provide evidence that CRA has determined that the person is a non-resident of Canada for the purpose of the *Income Tax Act*;
- provide the administrator with the non-residency statutory form; and
- if the person has a spouse, obtain spousal consent on the prescribed statutory form.

Pension plans are not required to provide for this unlocking provision or, if it is provided for in the pension plan, the pension plan may impose additional conditions on the person to benefit from it. The administrator is however required to respect the conditions above if it provides for such unlocking.

LIRAs are deemed to include this unlocking provision even in the absence of an express reference to it in the form wording.

5. Pharmacy and *In vitro* fertilisation in Quebec

On November 26, 2014 Quebec presented Bill 28 to adopt various measures relating to the presentation of the Budget on June 4th, 2014 and the will of the government to balance its budget. Some of these measures relate to the acts performed by pharmacists. On one hand, pharmacists will be allowed to perform three new acts for which they will be able to charge fees:

- Renewal of some prescriptions
- Drug prescription for conditions that do not require medical diagnostics
- Drug prescription to treat known illness (such as diabetes)

On the other hand, the legislation will prevent pharmacists for billing anyone for services unless permitted by regulation.

On November 28, 2014 the Quebec Minister of health, Dr. Gaétan Barrette, presented Bill 20 relating to a series of measures for the healthcare system. One of the noteworthy changes concerns medically assisted reproduction.

Upon the coming into force of the provisions of Bill 20, the Quebec program for medically assisted reproduction will be modified to include the following conditions:

- In vitro fertilization will be limited to women over 18 and below 42 years of age.
- A report for a positive psychological evaluation for the person or persons will need to be provided to the physician before any medically assisted reproduction steps are taken. Such report may also be required by the physician during the process if he/she believes that one of the person part of the parental project may put the security or the development of the child at risk.
- In vitro fertilization must only occur after a period of sexual relations or a number of artificial inseminations.
- Only one embryo, or two embryos in some cases for women over 37 years of age, can be implanted.
- A pre-implantation genetic diagnostic can be performed on the embryo only to identify serious single-gene disorder or chromosomal anomalies.

6. Changes to taxes in Quebec

In the November 2014 *Update on Québec's Economic and Financial Situation*, the Couillard government announced an increase to two tax rates that affect insurance premiums for Quebec residents, as of December 3, 2014:

1. The temporary contribution rate for insurance premiums is increased from 0.3% to 0.48%; and
2. The tax on capital for insurance corporations is increased from 2.0% to 3.0%.

7. New Brunswick Drug Plan

On December 9, 2014, the New Brunswick government presented for first reading Bill 4 that will amend the previously adopted mandatory drug plan that was scheduled for implementation on April 1, 2015. With Bill 4, the mandatory portion of the drug plan is repealed until the Health Minister, Victor Boudreau, and his team, can complete a further review of the proposed plan. Mr. Boudreau mentioned that it was the intention of the government not to introduce mandatory employer contributions. The voluntary portion of the drug plan remains in force with some adjustments to assist lower-income individuals.