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A New Agreement Respecting Multi-Jurisdictional Pension Plans is in Force

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On July 1, 2020, the new Agreement Respecting Multi-Jurisdictional Pension Plans (the “2020 MJPPA”) came into force. The 2020 MJPPA has been adopted federally and by every province that has a pension regulator, other than two (Manitoba and Newfoundland and Labrador). Widespread adoption of the 2020 MJPPA is an important milestone for employers and administrators who maintain multi-jurisdictional pension plans in Canada. In this Sidebar, we outline the significance of the 2020 MJPPA, and discuss noteworthy changes it makes to prior arrangements regarding the regulation of registered pension plans that have members subject to pension standards legislation of more than one Canadian jurisdiction.

The Patchwork Problem

Pension standards primarily fall under the jurisdiction of the provinces.¹ Starting in the 1960s, the provinces began adopting minimum standards legislation with respect to pension benefits.² The Parliament of Canada has established minimum standards legislation applicable to pension plans for members employed in federally-regulated employment. As is typically the case for provincially-regulated matters, uniformity across the provinces is impossible. Although the pension standards legislation in each jurisdiction covers similar topics, despite efforts to harmonize there are significant differences from one jurisdiction to the next.

Provincially-regulated employers that employ workers in multiple jurisdictions often establish a single Canadian registered pension plan – a “multi-jurisdictional plan” (MJPP) – for the entire workforce or a large segment of the workforce (e.g. all hourly paid workers). In light of the legislative patchwork described above, absent special relief, every MJPP would need to be registered with the pension regulator of every jurisdiction in which it has members employed. Moreover, the administrator of every MJPP would need to ensure compliance with the pension standards legislation of each

¹ With the exception of pension standards that apply to employees employed by a federally regulated undertaking, such as banks, railways, airlines and telecommunications (such employment is referred to as “included employment”).

² Prince Edward Island (PEI) has not adopted pension minimum standards legislation. Legislation was passed in 1990 but it was never proclaimed into force. In 2010 and 2012, new legislation was introduced in the PEI legislature but did not get past first reading. Since PEI does not have pension minimum standards legislation or a pension regulator, it cannot be a signatory to the 2020 MJPPA.

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such jurisdiction on a member-by-member basis – even in respect of aspects of plan operation that are collective in nature (for example, plan funding or investment in the defined benefit (DB) context).

Canada’s pension regulators soon recognized the challenges inherent to regulating MJPPs within a legislative patchwork. In 1968, the Memorandum of Reciprocal Agreement (the “Reciprocal Agreement”) was signed by all provinces with a view to facilitating the administration and regulation of MJPPs.³ To a similar end, federal-provincial bilateral agreements were entered into between the federal government and each of the provinces, other than Quebec, and Newfoundland and Labrador. The Reciprocal Agreement and the bilateral agreements introduced the concept of the “major authority” in relation to an MJPP, being the pension regulator of the jurisdiction in which the plurality (greatest number) of the plan’s members are employed. Any other jurisdiction in which an MJPP’s members are employed was considered a “minor authority”.

Under the Reciprocal Agreement, an MJPP was only required to be registered with the major authority. The major authority was responsible for enforcing applicable rules from the minor authority(ies). Under the Reciprocal Agreement and the bilateral agreements, a general custom evolved in the industry whereby, generally speaking, “plan-level” matters (e.g., plan funding and investing in the DB context) were governed by the provisions of the major authority’s legislation, whereas “member-level” matters (e.g., vesting, locking-in, portability rights, etc.) were governed by the provisions of the applicable minor authority’s legislation, based on the member’s jurisdiction of employment.

Although in most cases the Reciprocal Agreement⁴ and the customs that evolved around it, provided relief from the need to register an MJPP in multiple jurisdictions, and a general framework for the oversight and administration of MJPPs, the Reciprocal Agreement was a brief 4-page document that did not provide a comprehensive framework for the regulation and administration of MJPPs. Many interpretative issues arose under the Reciprocal Agreement.⁵

A First Attempt at a Comprehensive Framework for MJPP Regulation

The first attempt at a comprehensive regulatory regime governing MJPPs was the Canadian Association of Pension Supervisory Authorities (CAPSA⁶)’s 2011 Agreement Respecting Multi-Jurisdictional Pension Plans (the “2011 MJPPA”). The 2011 MJPPA

³ Excluding PEI.

⁴ As well as the federal-provincial bilateral agreements.

⁵ The uncertainty that remained under the Reciprocal Agreement is illustrated by the decision in *Québec (Régie des rentes) v Ontario (Pension Commission of Ontario)*, 2000 CanLII 30139.

⁶ CAPSA is the umbrella organization to which the federal pension regulator, and those of the provinces, belong.



was a comprehensive agreement which set out detailed rules governing the regulation of MJPPs, filling in many of the gaps in the Reciprocal Agreement and federal-provincial bilateral agreements, in some cases codifying informal customs that had been adopted by the pension regulators and industry. For example, the 2011 MJPPA set out a comprehensive scheme for determining which jurisdiction is the major authority, as well as rules for the transition of major authority status from one jurisdiction to another. The 2011 MJPPA also set out a prescriptive list of topics where the legislation of the major authority applies on a plan-wide basis and, by default, matters that were governed by the legislation of the minor authority(ies). Since the 2011 MJPPA sought to oust the pension standards legislation of the minor authority in respect of plan-wide issues, each provincial legislature (other than PEI) and Parliament was required to ratify it. Ratification proved difficult (ultimately the 2011 MJPPA was only signed by Ontario and Quebec).⁷

It soon became apparent that the 2011 MJPPA also had its shortcomings. CAPSA commenced work on its successor. A new Agreement Respecting Multi-Jurisdictional Pension Plans came into force in 2016 (the “2016 MJPPA”). British Columbia, Saskatchewan and Nova Scotia joined Ontario and Quebec in ratifying the 2016 MJPPA. The terms of the 2016 MJPPA were very similar to the terms of the 2011 MJPPA. At the time the 2016 MJPPA became effective, a review of the pension funding rules was being considered or undertaken by a number of provinces. In this regard, Quebec eliminated solvency funding requirements for DB pension plans effective January 1, 2016, introducing a novel and unique funding regime for single employer DB plans registered in Quebec. This change to pension funding rules had implications under the MJPPA. As a result, CAPSA undertook consultation and a review of the 2016 MJPPA on the issue of funding and other aspects of pension plan regulation.

The 2020 MJPPA

Effective July 1, 2020, the 2020 MJPPA came into force. The 2020 MJPPA has been adopted federally and by every province that has a pension regulator, other than Manitoba, and Newfoundland and Labrador. The signatories to the 2020 MJPPA now cover well over 95% of pension plans and pension plan members in Canada, meaning that the 2020 MJPPA will allow for more streamlined, efficient administration of MJPPs. The following provides a high-level overview of noteworthy elements of the 2020 MJPPA, many of which have been carried through from the 2011 MJPPA and 2016 MJPPA.

The 2020 MJPPA maintains the major authority/minor authority distinction. As noted above, the 2020 MJPPA sets out a comprehensive scheme for determining which

⁷ As a result, the Reciprocal Agreement and the bilateral agreements continued to govern for other jurisdictions.



jurisdiction is the major authority, the role of the major authority and rules for the transition of major authority status from one jurisdiction to another if the plurality of active membership shifts.

Final location approach. Starting with the 2011 MJPPA, the “final location” approach has been codified for the determination of member benefit entitlements. Put simply, the final location approach means benefits accrued by a member who had been employed in more than one jurisdiction are determined as though the member were always subject to the legislation of the final jurisdiction in which the member accrued benefits. For example, for a member of a DB plan who worked in Ontario, BC and then terminated employment while working in Alberta, the Alberta *Employment Pension Plans Act* governs the calculation of the commuted value of the member’s pension.

Application of the major authority’s legislation to enumerated plan-level matters. The 2020 MJPPA maintains and updates the provisions of Schedule B of the 2011 MJPPA and 2016 MJPPA, which set out topics where the provisions of the major authority’s legislation apply to an MJPP on a plan-wide basis. The provisions of Schedule B to the 2020 MJPPA largely relate to “plan-level” requirements such as: plan and amendment registration requirements, record-keeping responsibilities, and investment of pension plan assets. Of particular note, Schedule B to the 2020 MJPPA provides that annual and biennial statements for members and former members are governed by the legislation of the major authority. As a result, with the expanded scope of the 2020 MJPPA, an administrator with a cross-Canada workforce will no longer need to monitor and ensure compliance with requirements of every jurisdiction. This will significantly simplify the administration of MJPPs.

While it is helpful for administrators to have a prescriptive list of matters subject only to the legislation of the major authority, matters not set out in Schedule B to the MJPPA will continue to be governed by the legislation of the applicable minor authority (unless otherwise specified in the 2020 MJPPA), requiring MJPP administrators to adhere to differing requirements across Canada. Administrators will continue to be required to apply small benefit rules, vesting and locking-in requirements, and portability options on a member-by-member basis. Administrators will need to continue to monitor cross-Canada changes to such provisions and ensure their administrative practices are compliant with all applicable legislation.

New funding and asset allocation rules. In 2017, CAPSA released a consultation paper which focused on funding and asset allocation as the major areas of focus for a future MJPPA to replace the 2016 MJPPA.⁸ These topics are addressed in the 2020 MJPPA. Under the 2020 MJPPA, an ongoing MJPP is governed solely by the funding

⁸ See CAPSA’s *Consultation Paper on Proposed Changes to Funding and Asset Allocation Rules Under a Future Agreement Respecting Multi-jurisdictional Pension Plans*: <https://www.capsa-acor.org/Documents/View/179>



rules of the major authority's legislative regime. The 2020 MJPPA includes detailed prescriptive asset allocation rules to be followed on wind-up of an MJPP. Very generally, DC benefits are covered first, followed by DB benefits payable to plan members in all jurisdictions. Assets are allocated next to other DB benefits that are only provided in certain jurisdictions (e.g., grow-in benefits). Specified DB benefits are excluded from the allocation.

New annuity discharge rules. The 2020 MJPPA includes rules relating to annuity buy-out transactions. If both the major authority and the minor authority have legislative annuity discharge rules, then the major authority's funding rules will apply to and supersede the minor authority's rules. Otherwise, each jurisdiction's annuity discharge funding rules continue to apply to the members employed in that jurisdiction (or, in the case of deferred vested members, last employed there). If a major authority has annuity discharge provisions, these provisions will not apply to retirees and former members subject to a minor authority's legislation that has no legislative annuity discharge rules.

Transition Rules. The 2016 MJPPA set out detailed implementation and transitional rules to address new signatories; those rules have been maintained and updated for the 2020 MJPPA.

The most basic of pension plans are heavily regulated and challenging to administer. The administration and regulation of MJPPs in Canada is wrought with complexity and, to date, has entailed significant uncertainty in many areas. The 2020 MJPPA is an important step in the right direction. While complexities still exist, CAPSA and its members should be applauded for their efforts in stewarding the design and implementation of the 2020 MJPPA.

If you have any questions regarding this update, please do not hesitate to call a sidebar with any of us – we're here to help.

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