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Temporary DB Plan Funding Relief Introduced in Ontario

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On September 21, 2020, the Ontario Government filed Regulation 520/20 under the Ontario *Pension Benefits Act* (“Ontario PBA”), which offers temporary short-term funding relief to eligible employers to assist with cashflow constraints during the COVID-19 crisis. Eligible employers who sponsor single employer Ontario-registered defined benefit (“DB”) pension plans can elect to defer up to six months of contributions during the period from October 1, 2020, to March 31, 2021. All deferred contributions (plus interest) must be fully repaid no later than March 31, 2022.

This funding relief is unique in comparison to funding relief historically offered under the Ontario PBA and in other jurisdictions, including the relief introduced following the 2008 economic crisis. Significantly, the current relief applies to all DB pension plan contributions, including normal cost payments, for a discrete period of time and does not require approval from either plan members or the Ontario pension regulator, the Financial Services Regulatory Authority of Ontario (“FSRA”).

Also significant, for those employers who choose to take advantage of this relief, Regulation 520/20 imposes a number of restrictions on the employer’s business operations that are intended to ensure that the “freed up cash” made available as a result of the contribution deferral is used to maintain business operations. Regulation 520/20 further imposes a number of disclosure and filing requirements that apply for the duration of the employer’s contribution deferral period.

This Sidebar provides a summary of the temporary funding relief introduced by Regulation 520/20. Any employers who are interested in taking advantage of the relief are encouraged to contact us to discuss the requirements in more detail.

Overview of the Temporary Funding Relief

Eligibility

The relief generally applies to employers who sponsor single-employer DB pension plans. Multi-employer pension plans, public sector pension plans and specified jointly-sponsored pension plans (“JSPPs”) are specifically excluded from the relief.



Deferral Amounts

The relief permits employers to defer all required contributions to a DB pension plan, including: (1) normal cost contributions; (2) provision for adverse deviations in respect of the normal cost; and (3) all special payments determined in accordance with s. 5 of Regulation 909 under the Ontario PBA.

Deferral Period and Repayment Requirements

Employers can elect to defer one or more consecutive monthly payments that would otherwise be due for the six-month period from October 1, 2020 to March 31, 2021. All deferred payments must be paid in full (with interest) no later than March 31, 2022, in accordance with a payment schedule that is prepared by an actuary. Regulation 520/20 sets out minimum requirements for a staggered repayment schedule. Contributions in respect of October 2020 that are deferred must be repaid in April and May 2021. Contributions deferred in November 2020 to March 2021 must be repaid in monthly prescribed instalments from June 2021 through to March 2022.

Interest on each month of deferred contributions begins to accrue on the day on which the contribution was originally due and is calculated at the going concern interest rate or the solvency valuation interest rate, as applicable, set out in the plan's most recently filed actuarial valuation report ("AVR"). Interest stops accruing on the last day of the month in which the payment is required to be made under the payment schedule.

Employers may repay the full outstanding amount of deferred payments (with interest) to the pension fund at any time. Once all of the deferred contributions (and interest) are repaid, the employer is no longer required to comply with the ongoing disclosure and other restrictions provided for under Regulation 520/20 and as set out below.

Election and Ongoing Disclosure Requirements

To take advantage of this funding relief, employers must file an election, provide regular updates to FSRA and disclose the contribution deferral period to members. To help employers and administrators comply with these prescribed requirements, FSRA issued guidance in its [Pension Sector Emergency Management Response Guidance](#).

Details regarding the election and ongoing disclosure requirements are set out below:

- **File Election and Payment Schedule:** The employer must file an election and payment schedule with FSRA no later than the date on which contributions for the first deferred month are due. FSRA has indicated that a specific election form and payment schedule will be issued for this purpose shortly. Upon election, employers can immediately begin deferring contributions in accordance with the filed payment



schedule (in other words, employers do not need to wait for FSRA to approve the election or payment schedule).

The payment schedule must be prepared by an actuary and set out the monthly payments that are being deferred and the dates on which the contributions will ultimately be paid, along with other prescribed requirements. Once a payment schedule has been filed with FSRA, the payment schedule cannot be amended, except when a new valuation with a valuation date before March 31, 2021 is filed.

- **File Quarterly Updates:** The administrator must file quarterly updates to the payment schedule throughout the contribution deferral period. The updates must be prepared by an actuary and meet prescribed requirements, including setting out the amount of deferred payments (and interest) paid to the fund during the applicable quarter. The requirement to file updates ceases once FSRA has been informed that all deferred payments have been repaid (with interest) to the plan fund.

Each update must include a statutory declaration made by the employer indicating that the employer complied with the payment schedule and other prescribed restrictions during the quarter. For this purpose, FSRA issued a template statutory declaration as in its [Pension Sector Emergency Management Response Guidance](#).

- **Provide Notice to Members:** The administrator must inform members that an election has been made to temporarily defer contributions in the annual and biennial statements provided to active, former and retired members.

Also note that Regulation 520/20 includes specific rules that apply to cases where an AVR is filed after an employer has made an election to defer contributions.

Restrictions on Employers' Activities

An employer who elects to defer contributions under Regulation 520/20 is subject to a number of restrictions on the types of corporate payments and transactions the employer can enter into during the contribution deferral period. The presumed purpose of these restrictions is to ensure that employers use the “freed up cash” resulting from these deferred contributions to support continued business operations. These restrictions are a unique and distinctive aspect of this funding relief and, generally speaking, have not been included in other funding relief previously introduced under the Ontario PBA and in other jurisdictions.

Restrictions placed on employers' activities during the contribution deferral period include the following:



- paying a bonus to an executive¹ (regardless of whether the bonus is non-discretionary/discretionary or cash/non-cash);²
- increasing the compensation³ of any executive of the employer;
- declaring or paying any amount on any issued and outstanding share capital of the employer (whether as a dividend or a return of capital);
- buying-back or otherwise purchasing or redeeming any issued and outstanding share capital of the employer;
- repaying debt, loans or advances in excess of previously scheduled repayment obligations; and
- entering into certain related party transactions.⁴

In addition, there is also a restriction on plan amendments that increase members' benefits or ancillary benefits during the deferral period, unless the amendment is required by law or implements a benefit improvement agreed to in a collective agreement before September 21, 2020.

FSRA stated that it will "strictly supervise" these prohibited activities during the contribution deferral period. If an employer fails to comply with the prescribed requirements, the total amount of deferred contributions (plus interest) will become immediately due.

Additional Relief regarding "Catch-up" Contributions

In addition to the temporary funding relief outlined above, Regulation 520/20 also gives employers additional time to remit "catch-up" contributions to a DB plan which are due following the date on which a new AVR is filed (these "catch-up" contributions represent payments required from the valuation date to the filing date).

Normally, employers must make "catch-up" contributions (with interest) within 60 days of filing the AVR. Regulation 520/20 amended Regulation 909 to provide that employers will have 120 days to make "catch-up" contributions if an AVR is filed between September 21, 2020 and April 1, 2021. This relief is automatic and offered to all DB plan sponsors (except JSPPs) with no filing or notice requirements attached.

¹ "Executive" is defined as "an employee or office holder who is, a chief executive officer, president, vice president, chief administrative officer, chief operating officer, chief financial officer, chief information officer, chief legal officer, chief human resources officer or chief development officer of the employer or holds any other executive position or office with the employer, regardless of the title of the position or office".

² FSRA clarified that it considers both short-term or long-term incentives as "bonuses".

³ "Compensation" is defined as "anything paid or provided, directly or indirectly, to or for the benefit of a person who performs duties and functions that entitle the person to be paid, and includes salary, benefits, perquisites and all forms of non-discretionary and discretionary payments, but does not include bonuses".

⁴ A definition of "related person or entity" for this purpose is set out in Regulation 520/20.



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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