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Federal Consultation on Enhancing Retirement Security for Canadians

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In conjunction with the release of the federal Government's 2018 Fall Fiscal update last week, three federal Departments released a Consultation Document on Enhancing Retirement Security for Canadians. According to the Consultation Document "the Government is seeking feedback from pensioners, workers, companies, experts and other stakeholders in order to take a whole-of-government, evidence-based approach towards addressing retirement security for all Canadians." The focus of the consultation is on the third pillar of Canada's retirement system, workplace pension plans, with a primary focus on defined benefit ("DB") registered pension plans.

The Consultation Document comes on the heels of a number of high-profile corporate insolvencies (Nortel, Sears and Stelco being notable examples) which raised stakeholder concerns about potential gaps in the pension, insolvency, corporate and employee benefit regulatory environment. The consultation process is aimed at assessing "whether additional measures are necessary to better protect employee pension and benefit claims against the risk of employer insolvency." The Consultation Document raises three specific areas of review where the federal government wishes to hear stakeholder views: insolvency laws, pension funding rules, and corporate governance.

Insolvency Laws. In 2017 two private Members' bills (Bills C-372 and C-384) were introduced to provide super-priority for DB funding deficits and employee/retiree claims related to the termination of group health, life and disability benefits in connection with a corporate insolvency. Neither bill advanced beyond First Reading. In the Consultation Document, stakeholders are invited to provide their comments on prior proposals, including amending insolvency legislation to provide that unfunded pension liabilities and employee claims for the termination of employee benefits would be paid ahead of the claims of secured creditors.

The Consultation Document also seeks input on:

- (a) whether the "look-back" periods in the *Bankruptcy and Insolvency Act* and the *Companies Creditors' Arrangement Act* (the "CCAA") should be enhanced to include the power for a court to set aside executive bonuses



and compensation increases where a company with unfunded pension liabilities enters insolvency within a fixed period; and

- (b) whether the following amendments to the CCAA should be made:
- increasing participation for pensioners and employee groups at the outset of CCAA proceedings;
 - enhanced transparency for all creditors by requiring creditors to disclose their real economic interests; and
 - creating a more equitable process by imposing an express duty of good faith on all parties to the restructuring.

Pension Funding Rules. The Consultation Document seeks input on the following proposed changes to the federal *Pension Benefits Standards Act, 1985* (the “PBSA”):

- (a) the creation of solvency reserve accounts (“SRAs”) which are now in place under the Alberta and British Columbia pension legislation;
- (b) the establishment of specific criteria or conditions while DB funding relief measures are in place (e.g., prohibitions on dividend payments);
- (c) the ability of retirees to transfer the value of their pension entitlements as a locked-in transfer to another retirement vehicle in cases where a plan is wound up due to an employer insolvency; and
- (d) clarification of benefit entitlements that are dependent on sustainability or affordability.

Any of these pension funding proposals that are adopted would only apply to federally regulated pension plans.

Corporate Governance. The Consultation Document seeks input on the following proposed changes to the *Canada Business Corporations Act* (the “CBCA”):

- (a) restrictions on corporate behaviour where a company has a large pension deficit (e.g., restrictions on dividend payments, share redemptions and executive compensation packages); and
- (b) amendments to the CBCA to require corporations to report on policies that pertain to the interests of workers and pensioners and require directors to promote the company’s success for the benefit of all its stakeholders, including pensioners and employees.



Any of these corporate governance proposals that are adopted would apply only to CBCA corporations, not corporations incorporated under the provincial corporate statutes.

The Consultation Document states that “[i]n order to reach a balanced outcome, the Government will assess potential reform proposals with regard to their effectiveness in protecting pensioner and employee interests, whether the proposed action supports sustainable pension plan options, and their compatibility with the core principles and objectives of Canada’s current [retirement income system] and marketplace framework laws.”

The consultation period will run until December 21, 2018. Comments can be submitted directly [online](#). During this period, round-table meetings of stakeholder groups and conference calls will also be taking place.

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If you would like more information about the consultation or 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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