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Helpful Changes are on the Horizon: Ontario Pension Reform Update

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In recent weeks, a number of changes applicable to Ontario-registered pension plans have been introduced, including the following:

- On October 28, 2019, the Ontario Legislature introduced Bill 132, *Better for People, Smarter for Business Act, 2019* (“[Bill 132](#)”). Bill 132 includes a number of previously announced “red tape reduction” changes to the *Pension Benefits Act* (Ontario) (the “PBA”).
- On November 6, 2019, the Ontario Government released the Ontario Economic Outlook and Fiscal Review (the “[2019 Fall Economic Update](#)”) along with Bill 138, *Plan to Build Ontario Together Act, 2019* (the “[Fall Update Legislation](#)”) which also includes PBA changes.
- On November 8, 2019, the Ontario Government published [Regulation 368/19](#), [Regulation 369/19](#) and [Regulation 370/19](#), all of which are related to the new ability of Ontario-registered defined contribution (“DC”) pension plans to make variable benefit payments directly from the plan effective January 1, 2020.

This Sidebar summarizes these recently announced pension legislation changes, along with other related statutory and regulatory changes, and highlights the aspects of this reform that will be of interest to employers and pension plan administrators.

Electronic Communications as Default

Currently, an administrator of an Ontario-registered pension plan may only send statements and other information to members or other plan beneficiaries electronically if the individual has consented to receive communications electrically.¹

¹ Currently, section 30.1 of the PBA provides that when sending notices, statements and other records, an administrator may use of electronic “means” that comply with the *Electronic Commerce Act, 2000* (the “ECA”). A key component of the ECA, which is emphasized in Policy A300-807 adopted by the Financial Services Regulatory Authority of Ontario (“FSRA”), is that a plan administrator must have an individual’s explicit or deemed consent in order to use electronic means to communicate.



Following on the heels of CAPSA's Guideline No. 2, *Electronic Communication in the Pension Industry* ("[Guideline No. 2](#)") released in May 2019 and the Ontario Government's [Budget 2019 "Protecting What Matters Most"](#) released in April 2019, the Ministry of Finance released proposed amendments to the PBA to facilitate the use of electronic communications for the delivery of information from administrators to certain groups of plan beneficiaries, namely members and former members. Bill 132 largely implements the previously proposed PBA amendments but, in response to industry consultation, extends the use of e-communications as a default to retired members in certain cases, as explained below.

Once the Bill 132 amendments become law, an administrator may send active members and former members a notice by mail informing them that the administrator will begin to send certain documents (e.g., annual statements and PBA notices) in electronic form. Following the sending of that notice, members and former members are deemed to have consented to receive documents electronically unless they inform the administrator that they wish to continue to receive paper copies. Members and former members will retain a right to opt-out of electronic communications in the future.

Importantly, the deemed consent regime does not apply to individuals who are retired members, spouses or other plan beneficiaries. Administrators will continue to be required to seek consent from individuals in these groups in order to send documents electronically. However, when current active or former members who were given notice about the move to e-communications become retired members, the administrator can send them a 'reminder notice', following which the newly-retired member will continue to be deemed to have consented to receive e-communications, subject to their continued opt-out rights.

While the new regime does not generally prescribe specific means of e-communications, if a document contains personal information (e.g., an annual statement), an administrator will only be permitted to provide the document electronically through a "secure information system". Under the proposed PBA amendments, the only requirement for what constitutes a secure information system is that it requires the recipient to identify themselves (e.g., a log-in to a portal) before accessing the document. However, the amendments to the PBA provide that further conditions regarding secure information systems may be added by FSRA through its new rule-making authority. We may therefore see additional requirements from FSRA regarding secure information systems in the future.

The Bill 132 regime regarding deemed consent to e-communications is the first of its kind in Canada and will apply to members and former members who are subject to the Ontario PBA. These changes will come into force on the day Bill 132 receives Royal Assent. Bill 132 passed Second Reading on November 7, 2019 and is currently being considered by the Standing Committee on General Government. Given that these



changes may be coming into force shortly, plan administrators may wish to prepare by ensuring that they have procedures in place to confirm that they have up-to-date mailing and email addresses for members, particularly when members are leaving employment or retiring.

Through CAPSA's Guideline No. 2, the pension regulators across Canada stated that they "support the use of e-communication as the default option, as an efficient and effective communication tool." Given this CAPSA statement, we are optimistic that other jurisdictions will follow Ontario's lead and similarly facilitate e-communications in the near future.

Decumulation Options for DC Pension Plans

The Ontario and Federal governments have recently announced important initiatives to permit employers to add new decumulation options for members of DC pension plans.

Variable Benefits

The PBA was amended in 2015 to permit variable benefit payments, i.e., periodic pension payments to retired members and surviving spouses paid directly from a DC pension plan. On November 8, 2019, final *Variable Benefits* Regulation 368/19 (the "[Variable Benefit Reg](#)") and related amendments to the PBA's *General and Family Law Matters* Regulations were released. The PBA's variable benefits regime will come into force on January 1, 2020.

Variable benefits will not be a required form of payment from a DC pension plan but will become an option that employers may make available to members as an alternative to the traditional DC payment options (which are to transfer the DC account balance to an insurer to purchase an annuity, or to a financial institution to establish a life income fund (LIF) for the member).

The new Variable Benefit Reg sets out a number of requirements relating to the administration of variable benefit provisions, including basic rules about variable benefit accounts and administrator obligations. The final Variable Benefit Reg are similar to the draft released for consultation earlier this year (see our [April 15, 2019 Sidebar](#)). One notable change from the draft regulation is that the final Variable Benefit Reg allows for a partial transfer from a member's DC account to their variable benefit account. With the introduction of the Ontario PBA variable benefits regime effective January 1, 2020, all jurisdictions in Canada other than New Brunswick and Newfoundland and Labrador now permit DC pension plans to include variable benefits provisions.²

² Note that Prince Edward Island has not enacted minimum standards pension legislation.



VPLA

On July 30, 2019, the Federal Government released draft amendments to the *Income Tax Act* (the “ITA”) relating to a new form of annuity called a “variable payment life annuity” (“VPLA”), which may be provided to retirees directly from a DC pension plan. A VPLA offered under a DC pension plan will be an annuity payable directly from the plan for a retiree’s lifetime (with survivor benefits, where applicable). VPLAs will be adjusted for variations in the collective investment return and mortality experience of all VPLA annuitants. The VPLA will provide a measure of longevity risk protection to individuals, with overall positive and negative experience being borne by the group.

As with the variable benefits described above, employers will not be required to introduce a VPLA option to their DC pension plan. Amendments to the PBA and other pension standards legislation will be necessary in order to allow VPLAs to be offered under DC pension plans.

The introduction of variable benefits under the PBA and VPLAs under the ITA are important DC pension plan decumulation initiatives that will help with industry initiatives to build more flexible DC pension plans. Employers who are considering offering either arrangement under their DC pension plans will need to give careful consideration to the practical and fiduciary implications of these newly introduced arrangements.

The variable benefits and the VPLA regimes both allow for retirement income to be paid directly from a DC pension plan. The Federal Government also released draft amendments to the ITA to allow DC pension plan members to use a portion of their account balance to purchase a life annuity starting no later than age 85. This “advanced life deferred annuity” (or “ALDA”) regime is expected to be in effect as of January 1, 2020. Although no amendments to the PBA are required to permit administrators to allow members to purchase an ALDA, administrators will need to review their pension plan texts to determine whether an ALDA option is permitted to be made available to members or whether amendments to the plan text are required.³

Modernizing the Pension Sector Framework

The Ontario Government recently announced other amendments to the PBA including important changes regarding the design and regulation of certain types of pension plans.

³ Some plans do not allow partial account transfers and others limit annuities to pensions starting at age 71.



Conversion of Single Employer Pension Plans (“SEPPs”) to Jointly Sponsored Pension Plans (“JSPPs”)

A number of universities in Ontario are in the process of creating a JSPP through the merger of multiple existing SEPPs. Bill 132 includes PBA amendments relating to and facilitating this merger.

The Fall Update Legislation also includes PBA amendments relating to SEPP to JSPP conversions that would allow DC accounts to remain outside of the conversion.

Individual Pension Plans Review

The 2019 Fall Economic Update announced that the Ministry of Finance will commence a consultation on a proposal to exempt certain individual pension plans and designated plans from the application of the PBA, with potential legislative amendments to follow.

Other Key PBA Changes

Family Law Valuations and Division following a Transfer of Benefits

The PBA includes a detailed regime governing the valuation and division of pension benefits on marriage or common-law spousal relationship breakdown. Bill 132 introduces technical amendments to these PBA provisions to address the situation where a member’s benefits are transferred out of the pension plan during the period between the valuation date and the date that an application is made under the PBA’s family law provisions.

Streamlined Process for Missing Member Waivers

Administrators are required under the PBA to provide biennial written statements to former and retired members. The PBA currently permits the Chief Executive Officer of FSRA (the “CEO”) to waive this statement requirement if the CEO is satisfied that there are “reasonable and probable grounds” to believe a former or retired member is missing.

Bill 132 proposes to amend the PBA so that the CEO may waive the statement requirement if the CEO is satisfied that the administrator has made “reasonable efforts” to locate missing members and lists specific factors that the CEO will consider in determining whether the administrator made reasonable location efforts. These changes will come into force on the day that Bill 132 receives Royal Assent. These are welcome revisions which lower the threshold for administrators to obtain a waiver of the biennial statement requirement for missing members.



Automatic Adoption of Code, Formula, Standard or Procedure in PBA Regulations

The PBA currently provides that the PBA regulations may adopt and require compliance with any code, formula, standard or procedure. A small but meaningful proposed amendment to the PBA is the addition of new subsection which will provide that the PBA regulations may also adopt any amendments made to a code, formula, standard or procedure from time to time. This new section will come into force on the day that Bill 132 receives Royal Assent.

The PBA Regulations adopt, for example, section 3500 of the Canadian Institute of Actuaries' Standards of Practice in order to calculate the commuted value of a benefit. In the past, when this actuarial standard was amended, the PBA Regulations required corresponding amendments before the new actuarial standards became operative. Once these amendments are proclaimed into force, the PBA regulations can automatically adopt any changes to these standards in the future.

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

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