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Ontario Government Supports Efficiencies in Pension Sector

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Last Thursday the new Ontario government presented the 2018 Fall Economic Outlook and Fiscal Review. Budget legislation, Bill 57, *Restoring Trust, Transparency and Accountability Act, 2018*, was introduced in the legislature on the same day. The 2018 Fall Economic Outlook and Bill 57 included a number of discrete but important changes to the *Pension Benefits Act* (Ontario) (PBA).

Jointly Sponsored Pension Plans

The 2018 Fall Economic Outlook contains a strong endorsement of recent efforts to merge and convert single employer pension plans in the broader public sector into jointly sponsored pension plans (JSPPs) as a means to reduce costs and improve efficiencies. The 2018 Fall Economic Outlook highlighted the significant efforts of several universities that are working to merge their pension plans into a new JSPP that will be open to the entire university sector. The Fall Economic Outlook acknowledges that a sector-wide plan would achieve efficiencies of scale, improved investment opportunities and savings in plan administration. The 2018 Fall Economic Outlook also announced that the university sector JSPP, once established, is expected to be treated similarly to other broader public-sector, solvency-exempt JSPPs.

Bill 57 contains amendments to the PBA that will facilitate the merger of all types of pension plans into public sector JSPPs, including hybrid plans (i.e., those with both defined benefit and defined contribution provisions).

Discharge Rules for Buy-Out Annuities

As we discussed in our [June 2018 Sidebar](#), PBA amendments came into force on July 1, 2018 which provide administrators of ongoing single-employer defined benefit pension plans who purchase “buy-out annuities” a discharge if the requirements of the PBA and Ontario Regulation 193/18 are met. Bill 57 makes a number of further changes to the new PBA discharge regime, as follows:

1. Expanded Discharge Coverage. The discharge regime currently applies only to annuities purchased for retired members and former members. Bill 57 includes amendments to the PBA to extend discharges to annuities purchased for surviving spouses and former spouses (where a member’s pension has been split following a



marriage breakdown). The same PBA requirements that must be met to obtain a discharge currently, including notices, the filing of an actuarial certificate, and the substantive requirement that the pension purchased must provide the same benefit as the person would have received from the pension plan will apply to annuities purchased for surviving spouses and former spouses. These PBA amendments are “clean up” changes to address an apparent drafting oversight under the original discharge regime.

2. Rectification Provisions. There are a number of requirements that must be met for an administrator to obtain a discharge. Bill 57 includes amendments to the PBA which provide that if an administrator takes the steps necessary to obtain a discharge and it is subsequently discovered that a requirement was not in fact met, the administrator is deemed not to have been discharged and the administrator must notify applicable retirees, former members and surviving spouses. The PBA is however further amended to permit the administrator to subsequently requalify for a discharge if the administrator later satisfies all of the requirements of the PBA and Regs. This provision was presumably introduced to address situations where, due to an administrative error, the discharge conditions were not satisfied.

Bill 57 also adds new provisions to the PBA that allows an administrator to obtain a discharge for annuity buy-out purchases, even if the discharge rules are not followed in the first instance, so long as specified requirements are met.

3. Superintendent Power. Bill 57 amends the PBA to give the Superintendent the power to order insurance companies to repay any amounts received in respect of a buy-out annuity purchase, plus interest, to the purchasing plan if the purchase does not satisfy the requirements of PBA. Such orders will be enforceable as if they are orders of the Superior Court. These new provisions are consistent with the Superintendent’s existing powers under section 43 of the PBA in relation to annuity purchases which are not afforded a statutory discharge.

We expect that companion changes will also be made to Ontario Regulation 193/18 in conjunction with changes made to the PBA discharge rules noted above.

Electronic Designation of Beneficiaries

The PBA is currently silent on the specific form that beneficiary designations must take, and most administrators accept only “pen and ink” beneficiary designations. Currently, the *Succession Law Reform Act* (Ontario) (SLRA) governs beneficiary designations for Ontario-based members. Bill 57 amends the PBA to specifically permit electronic beneficiary designations notwithstanding any contrary requirements under the SLRA provided that any prescribed requirements are followed. The prescribed requirements have not yet been published. We will report on the electronic beneficiary designation requirements once they are available.



Unlocking for Non-Resident Former Members

Consistent with pension standards legislation in other jurisdictions, Bill 57 amends the PBA to allow for a pension plan to permit the commutation and unlocking of former members' deferred pension entitlements in cases where the former member becomes a non-resident of Canada for purposes of the *Income Tax Act* (Canada) and his/her spouse provides a written waiver in the form approved by the Superintendent. In order to allow for non-resident unlocking, the pension plan text must provide for this right. Currently, non-resident unlocking is only available in Ontario for funds transferred to a locked-in retirement account (LIRA) or life income fund (LIF).

Variable Benefit Provisions

Although not yet in force, the PBA has previously been amended to allow for periodic payments to be made directly to plan beneficiaries from a defined contribution pension plan (variable benefit provisions). Bill 57 includes an amendment to the variable benefit rules to allow retired members to unlock and withdraw up to 50% of the amount transferred into the variable benefit account within 60 days of it being established. This unlocking opportunity is consistent with the existing rules for funds transferred to a LIF directly from a pension plan. In order to allow for variable benefit payments and the 50% unlocking opportunity, the pension plan must provide for these rights.

We will continue to monitor developments as Bill 57 passes through the legislature in the coming weeks. 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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