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Welcome Amendments to the Ontario *Pension Benefits Act* Contained in *Stronger, Fairer Ontario Act (Budget Measures), 2017*

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Ontario introduced Bill 177, *Stronger, Fairer Ontario Act (Budget Measures), 2017*, for first reading on November 14, 2017. The Bill makes a number of amendments to the Ontario *Pension Benefits Act* (the PBA), which will be of interest to employers and pension plan administrators, including:

- implementing the framework for the introduction of new funding rules for defined benefit plans;
- adding new requirements to maintain and file funding and governance policies;
- providing a full discharge for administrators who complete buy-out annuity purchases;
- establishing a registry for missing pension plan beneficiaries;
- clarifying requirements for the administration of variable benefits payable from defined contribution plans;
- overhauling the requirements for the conversion of multi-employer pension plans to target benefit plans; and
- making changes relating the regulatory framework for pensions that will apply once the Financial Services Commission of Ontario is replaced with the Financial Services Regulatory Authority.

New Funding Framework

Following consultations with stakeholders, earlier this year the Ontario Ministry of Finance announced that it would establish a new funding framework for defined benefit pension plans. The changes are, in large part, a response to the concerns of employers that the solvency funding requirements are unpredictable and onerous, particularly during the current long-term low interest rate environment. Bill 177 begins to implement elements of this new funding framework, although much of the detail will be contained in regulations which have not yet been released for comment. Defined benefit pension plan sponsors eagerly anticipate the release of further information, particularly about the new funding cushion that will be required for most defined benefit pension plans.



To set the context for the changes, recall that the current funding framework under the PBA for single-employer defined benefit plans requires the payment of normal cost contributions to fund benefits accruing on a current basis; special payments to fund any going concern unfunded liabilities (over a 15-year period); and special payments to fund any solvency deficiencies (over a 5-year period).

New Going Concern Amortization Schedule

On May 19, 2017, the Ministry of Finance announced that the amortization period for funding going concern unfunded liabilities would be shortened from 15 years to 10 years while allowing for consolidation of deficits under a single funding schedule.

Bill 177 does not deal with the consolidation under a new schedule or the change in amortization period because these will be implemented solely by regulation.

New Solvency Funding Target

The Ministry of Finance also announced a key change to solvency funding. Instead of requiring that solvency deficiencies be funded to 100% over a 5-year amortization period, solvency deficiencies will only need to be funded to an 85% target level.

Bill 177 introduces amendments to the PBA to reflect this change by replacing certain references to “solvency deficiency” with the term “reduced solvency deficiency” that will be defined by regulation.

New Provision for Adverse Deviation (PfAD) Funding Cushion

Finally, the Ministry of Finance announced a new requirement for a provision for adverse deviation. As expected, Bill 177 adds the requirement to fund a PfAD in respect of the normal cost of benefits that are accruing under the plan in addition to the normal cost itself. Funding of a PfAD creates a reserve that is intended to help manage future risk and ensure benefits are more secure. Bill 177 does not set out the method to be used to calculate the PfAD nor does it indicate whether the PfAD will be determined by reference to the pension fund’s investment profile. This information will also be contained in regulations.

The PfAD may be subject to a contribution holiday if a pension plan has sufficient available surplus and the PfAD will also be used to ensure there is a sufficient reserve before surplus refunds are permitted to be made to employers from ongoing pension plans. Amendments also permit members of jointly sponsored pension plans and employers to reduce or suspend any required contributions for the PfAD in respect of the normal cost of the pension plan in certain circumstances.



We expect that draft regulations, including details of the PfAD, will be released before the end of this year. We also anticipate that the Ministry of Finance will soon address other legislative initiatives that were part of the defined benefit plan funding framework review, including the funding of benefit improvements and restrictions on contribution holidays.

Administrator Discharge on Purchase of Annuities

Currently, the PBA permits plan administrators to provide pension benefits through the purchase of annuities from insurance companies, however, it does not provide administrators who choose to do so with a discharge. This means that plans may remain liable should the full value of those benefits not be paid by the insurer (because of an insurer insolvency) and may require the annuity policy to be partially surrendered if a plan is later wound-up in an underfunded position. The current regime also requires administrators to include the value of buy-out annuity policies in actuarial valuations and treats annuitants as continuing plan members for purposes such as issuing statements and making marriage breakdown valuations available. These factors have limited the prevalence of annuitization as a de-risking strategy. Bill 177 will resolve many of these concerns. If certain requirements are met, an administrator will be discharged on the purchase of buy-out annuities, and for purposes other than retaining a right to surplus payable on a plan wind-up, annuitants will no longer be considered former members or retired members of the pension plan. The requirements that must be met to obtain the discharge include: notice to affected persons, the annuity benefits being the same as the benefits payable from the plan, the purchase meeting funding restrictions, the insurance company being authorized to sell annuities, the group annuity policy containing certain prescribed requirements, and the filing of a certificate signed by an actuary with the Superintendent which certifies compliance with the above requirements. We expect that this change will also lead to more consistency in the accounting treatment of buy-out annuities.

For plan administrators who have already completed buy-out annuity purchases, a discharge from liability will now be available if certain conditions are met. The discharge will be effective upon the administrator filing a certificate signed by an actuary certifying that the annuity purchase met (or was subsequently amended to meet) the prescribed requirements. One of the requirements for the discharge is that the administrator provides notice to annuitants of the intention to apply for a discharge.

Pension Benefits Guarantee Fund (PBGF)

The PBGF guarantees certain pension entitlements when a single-employer defined benefit pension plan is wound-up in a deficit position and the sponsoring employer is unable to fund the shortfall. On the basis that the changes to the solvency funding regime may create more risk for plan beneficiaries, the PBGF provisions are amended



by Bill 177 to increase the maximum pension benefit guaranteed by the PBGF from \$1000 to \$1500 per month. In addition, Bill 177 will improve access to the PBGF by removing restrictions on coverage based on members' age and years of employment or membership in the pension plan. These amendments apply to plan wind-ups that occur on or after the amendments come into force. We expect that corresponding increases to PBGF assessments payable by employers will be announced shortly.

New Funding and Governance Policies

Bill 177 requires administrators to establish, maintain and file governance and funding policies with the pension regulator, similar to the rules now in place in Alberta and British Columbia. Again, we will have to wait for the regulations to get a better idea of the content requirements and the filing deadlines for these policies. These documents will be available to members, as is the case with most documents filed with the Superintendent.

Missing Beneficiaries

Often pension plan beneficiaries do not provide updated contact information to plan administrators. This is particularly problematic for deferred vested members. Unlike the missing beneficiary programs in other jurisdictions (Quebec, for example), Bill 177 does not provide for transfer of amounts due to unlocatable beneficiaries to a repository. Instead, the Superintendent will be required to establish, maintain and operate an electronic registry relating to beneficiaries who are missing. Plan administrators will have to notify the Superintendent if a beneficiary cannot be located, and the Superintendent will then record information about the beneficiary in the registry. Individuals may submit requests to the Superintendent to determine if they, or someone they are authorized to act on behalf of, are a beneficiary recorded in the registry.

Variable Benefits

Bill 177 includes further amendments to unproclaimed provisions of the PBA that will allow for defined contribution pension plans, if so amended, to make periodic payments directly to retired members instead of purchasing a life annuity or transferring the defined contribution account balance to a life income fund. This refinement of the variable benefit provisions is consistent with the recent focus on increasing the range of decumulation options available to Ontario-registered defined contribution plans. Bill 177 adds provisions to the PBA to address the right of a specified beneficiary of a retired member for whom a variable benefit account has been established to receive account statements, to make a beneficiary election, and to transfer the account balance out of the pension plan.



Target Benefit Plans

Bill 177 repeals and re-enacts unproclaimed provisions specifying the criteria that are required to be met for a plan to be considered a target benefit plan under which benefits may be reduced while the plan is ongoing if funding is insufficient. At this stage, Ontario's target benefit plan legislation is limited to multi-employer plans established in unionized environments. The Bill adds new requirements governing the conversion of multi-employer pension plans to target benefit plans, including requirements regarding notice and Superintendent consent. Of particular note, a plan administrator will have to consult with any union that represents members of the multi-employer pension plan about a proposed conversion to a target benefit plan but individual consent to the conversion is not required from plan beneficiaries.

Pension Regulatory Framework

The Ontario government is continuing to move forward with its new pension regulator – the Financial Services Regulatory Authority of Ontario (the Authority). Bill 177 includes amendments to both the PBA and *the Financial Services Regulatory Authority of Ontario Act, 2016*, aimed at clarifying the Authority's objects, powers and duties and rule-making authority. The Authority will be empowered to publish rules to govern how certain aspects of pension plan administration are required to be performed and may allow the Authority to be nimbler to address concerns. Bill 177 also proposes to enact a new piece of legislation, the *Financial Services Tribunal Act, 2017* which will continue the Financial Services Tribunal as the statutory tribunal to hear pension-related disputes.

Bill 177 also contains amendments clarifying wind-up funding requirements for pension plans established pursuant to collective agreements, filing requirements for plans operating in unionized environments, and special provisions for the pension plans sponsored by Essar Steel Algoma Inc.

We will continue to monitor any changes made to Bill 177 as it is debated by the Ontario Legislature and will also report on the content of the regulations that we expect will contain much of the detailed information plan sponsors and administrators need to navigate these changes to Ontario's pension landscape.



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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