LEGISLATIVE AND REGULATORY UPDATE
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Federal

Federal Bill C-13 re Budget Amendments

Following up on the budget released earlier this year, the federal government introduced Bill C-13 on October 4, 2011. The Bill received Royal Assent on December 15, 2011. Bill C-13 will amend the Income Tax Act (the ITA) to introduce rules to limit tax deferral opportunities for individual pension plans, and change the pension-to-registered retirement savings plan transfer limits in situations where the accrued pension amount was reduced due to the insolvency of the employer and underfunding of the employer’s registered pension plan. It will also amend the Canadian Human Rights Act to repeal certain provisions that provide for mandatory retirement, and the Canada Labour Code to repeal a provision that denies employees the right to severance pay for involuntary termination if they are entitled to a pension.

Federal Consultation re Proposed PRPP ITA Amendments

Following its introduction of Bill C-25 on November 17, 2011, the federal government released, for consultation, a package of draft legislative proposals under the ITA to accommodate the creation of Pooled Registered Pension Plans (PRPPs) within the basic system of rules and limits currently applicable to registered pension plans and RRSPs. It is anticipated that the introduction of these new tax rules will “set the stage” for provincial legislation required to implement PRPPs beyond federal “included employment”.

It is proposed that these changes come into force at the same time as Bill C-25. The government has invited interested parties to submit comments on the consultation package by February 14, 2012, following which legislation will be introduced “at an early opportunity”.

OSFI Draft Instruction Guide re Benefit Reduction

The Office of the Superintendent of Financial Institutions (OSFI) has issued the Draft Instruction Guide - Authorization of Amendments Reducing Benefits in Defined Benefit Pension Plans. This draft Instruction Guide replaces the Instruction Guide for the Authorization of Amendment Reducing Benefits in Defined Benefit Pension Plan issued in April 2006. The Guide sets out the factors that OSFI considers with respect to an application seeking the Superintendent’s authorization under paragraph 10.1(2)(a) of the PBSA to reduce pension benefits or pension
benefit credits accrued before the date of the amendment or an immediate or deferred pension benefit to which a member or former member was entitled before the date of the amendment.

**OSFI Final Regulation re Pension Assessments**

Further to draft regulations released last fall, the federal government has finalized regulations authorizing OSFI to recover costs to administer the *Pension Benefits Standards Act* (PBSA) through the annual assessment of federally registered private pension plans. These regulations include some changes to the pension assessment formula, such as: including all plan beneficiaries (rather than active members only) in the plan fee base, increasing the minimum annual assessment to $600 (from $440) and increasing the maximum to $240,000 (from $220,000). The new regulations came into force on December 31, 2011, but a notice setting out the basic rate will be published for the fiscal year beginning on April 1, 2012.

**Ontario**

**Ontario Regulation re Marital Breakdown**

Ontario Regulation 467/11 was filed on December 16, 2011 and came into force on January 1, 2012. The regulation amends Regulation 287/11 (the Family Law Regulation) by temporarily adding the unproclaimed section 1.1 of the PBA – the definitions of “retired member” and “former member”. Once the new Bill 236 section 1.1 definitions come into force, the definitions in the Family Law Regulation will automatically be revoked.

**Ontario Regulation re PBGF**

Ontario regulation 466/11 was filed on December 16, 2011 and came into force on January 1, 2012. The regulation makes changes to the Pension Benefits Guarantee Fund (PBGF) provisions of Regulation 909, including:

- increasing annual assessments for each pension plan covered under the PBGF with PBGF assessment dates of January 1, 2012 or later;

- excluding benefit improvements made less than five years before plan wind ups on or after December 8, 2010 (instead of three years previously);

- extending the exclusion period for PBGF coverage for new plans from 3 to 5 years;

- changing how a PBGF claim is calculated for plans with a wind up date on or after December 8, 2010; and

- clarifying how assets are allocated when a multi-jurisdictional pension plan registered in Ontario, that is subject to the new Agreement Respecting Multi-Jurisdictional Pension Plans between Ontario and Quebec, is wound up.
**FSCO Final Risk-Based Regulation Framework**

Following up on an earlier consultation paper, FSCO has finalized its risk-based framework for the regulation of pension plans. Under FSCO’s new “Regulatory Response Model”, the degree of regulatory involvement is based on two factors: (i) probability of risk; and (ii) impact of risk. FSCO describes four risk quadrants as follows:

- **High Probability/High Impact Risk**: For example, where there is a failure to remit contributions, major corporate restructurings, chronic significant underfunding, significant member complaints, and/or excessive investment risks, such plans would be subject to “intervention” such as regular meetings, on-site examinations, and legal proceedings.

- **Low Probability/High Impact Risk**: For example, large plans with the potential for impact on many plan members or a high impact on the Pension Benefits Guarantee Fund (PBGF) would be subject to “proactive supervision”, including ongoing monitoring, periodic reporting, possible interactions and on-site examinations.

- **High Probability/Low Impact Risk**: For example, smaller plans with clear risk indicators and larger plans with late filings or member complaints would be subject to ongoing “monitoring”.

- **Low Impact/Low Probability Risk**: For example, many individual pension plans and defined contribution plans would likely be subject to general education and communications.

FSCO will consider risks based on the following categories: (i) funding; (ii) investment; (iii) administration; (iv) governance; and (v) sponsor/industry.

Risk would first be assessed by the Risk Indicator Tool (RIT) - a largely automated process. Next there would be a two-tier review process. A “Tier 1” review would be performed to validate the results form the RIT. Based on the results of the Tier 1 review, the reviewer would assign the plan into one of the risk quadrants described above. Those plans identified as “high risk” (i.e., high probability/high impact) would then be subject to a “Tier 2” (or more detailed) review. Plans in the “moderate risk” category (i.e., low probability/high impact or high probability/low impact) could also be subject to a Tier 2 review based on the judgment of the Tier 1 reviewers.

*Additional Ontario legislative and regulatory updates are contained in the FSCO update which can be found in the Appendix.*
**British Columbia**

*B.C. Family Law Act re Pension Division*

British Columbia Bill 16, *Family Law Act*, received royal asset on November 24, 2011. This Bill replaces the B.C. *Family Relations Act*. One of the main changes to the B.C. family law regime is the extension of a statutory right to property division to common law couples. Part 6 of the (old) B.C. *Family Relations Act* provides for automatic division of pension contributions made during a marriage and can also divide pre-marriage contributions under certain circumstances. However, the automatic pension division rules did not apply to unmarried persons or those in common law or “marriage-like” relationships. The (new) *Family Law Act* will extend the benefit division entitlement to common law spouses who have lived together for more than 2 years if they meet the following definition:

3 (1) A person is a spouse for the purposes of this Act if the person

(a) is married to another person, or

(b) has lived with another person in a marriage-like relationship, and

(i) has done so for a continuous period of at least 2 years, or

(ii) except in Parts 5 [Property Division] and 6 [Pension Division], has a child with the other person.

The pension provisions have not yet been proclaimed in force.

**Manitoba**

*Manitoba Amends General Regulation*

Manitoba filed Regulation 205/2011 on December 2, 2011, making a number of amendments to the Manitoba Pension Benefits Regulation, including:

- adding a new provision enabling the Manitoba Commission to establish procedures for hearings;
- increasing the plan registration and annual fees;
- expanding the information to be provided to a member’s spouse or common-law partner;
- permitting letters of credit to be used for solvency deficiencies;
- adding provisions related to multi-unit plans;
- amending provisions related to pension division on marriage breakdown; and
- adding an administrative penalties section, which sets out penalties for contravening the Manitoba *Pension Benefits Act* and/or regulations.

These changes are now in force.
**Manitoba Regulations re Solvency Funding**

Manitoba also passed Regulation 213/2011, “Special Payments Relief Regulation, 2011”. The regulation, similar to one introduced in 2008, allows employers to extend the solvency amortization period to 10 years from five. Manitoba Regulation 214/2011 amends the 2008 solvency funding relief regulation.

**New Brunswick**

**New Brunswick Regulations re Funding**

On December 8, 2011, New Brunswick passed regulation 2011-71, which makes amendments with respect to pension plan funding. The regulation includes the following changes:

- if an actuarial valuation report on or after April 1, 2011 indicates that a plan’s transfer ratio is less than 0.9, annual valuations are required; and
- solvency deficiencies can be consolidated and the amortization period extended to 10 years for valuation reports between April 1, 2010 and January 1, 2012 upon request and upon meeting certain conditions.

**Newfoundland**

**Newfoundland Regulation re Payments on Plan Termination**

Regulation 103/11 amends the Newfoundland Pension Benefits Regulation regarding payments upon plan termination. Specifically, it adds a new provision, which sets out the process and timing of such payments.

**Nova Scotia**

**Nova Scotia Pension Benefits Regulations re Funding & Plan Administration**

Nova Scotia published new regulations for comment. Comments are due by January 31, 2012. The regulations largely focus on funding defined benefit plans, but also include some provisions related to plan administration.

In particular, the new regulations include provisions related to the funding of jointly-sponsored pension plans (which are new to Nova Scotia), and a new provision which permits an administrator to “offset” contributions to a defined contribution plan (resulting from a conversion of a defined benefit plan to a defined contribution plan) with any surplus in the pension fund after conversion.

**Nova Scotia Bill 96 re Pension Reform**

Nova Scotia Bill 96, An Act Respecting Pension Benefits, received royal assent on December 15, 2011. The current Nova Scotia Pension Benefits Act will be repealed and replaced with Bill 96. The Bill includes amendments, which address the following:

- adding “retired members” as a new category of plan participants;
- jointly sponsored pension plans and target benefit plans;
- immediate vesting;
- new definition of spouse and 100% pre-retirement death benefit;
- phased retirement;
- asset transfers between pension plans;
- surplus, contribution holidays and plan expenses;
- permitting prescribed employers to use letters of credit to fund solvency deficiencies;
- new provisions regarding record-keeping and disclosure; and
- authority to enter into agreements with other jurisdictions with respect to multi-jurisdictional plans.

**Quebec**

*Quebec Bill 42 & Regulations re Extension of Solvency Funding Relief*

Back in 2009, the Quebec government adopted measures to alleviate the effects of the 2008 financial crisis on the funding of defined benefit plans. Employers could instruct a plan’s pension committee to implement one or more of the following measures for the first complete actuarial valuation dated after December 30, 2008:

- Use a “smoothing” method (i.e., averaging method) to value plan assets on a solvency basis over a 5-year period rather than using the current market value;
- Consolidate certain solvency deficiencies; and
- Extend the amortization period to eliminate the new solvency deficiency from 5 to 10 years.

These measures were due to expire at the end of 2011. The Quebec government extended the temporary solvency relief measures for an additional period of two years (i.e., until December 31, 2013).

**Saskatchewan**

*Saskatchewan Bill 4 re Multi-Jurisdictional Agreements*

Bill 4, *An Act to Amend the Pension Benefits Act, 1992*, was introduced for first reading on December 8, 2012. If passed, the Bill will amend the Saskatchewan *Pension Benefits Act* to permit the Saskatchewan government to enter into agreements regarding multi-jurisdictional pension plans.