Special Communiqué

New pension laws in Alberta

On July 22, 2014, the Alberta Government passed the new *Employment Pension Plans Regulation* (the "New Regulation"). The New Regulation concerns the new *Employment Pension Plans Act* (the "New Act"). Both the New Act and New Regulation will take effect on September 1, 2014. Previously, the New Act had received royal assent in December 2012, but had not been proclaimed. See also our *News & Views* of November 2012.

The New Regulation contains significant details that were not known publicly until now. Key provisions of the New Regulation concern new plan structures, funding rules, plan membership, and disclosure requirements. Plan administrators must comply with the New Act and New Regulation as of September 1, 2014, and must file plan amendments by the end of the year.

Target benefit plans (TBPs)

A number of considerations apply for TBPs, which will allow for fixed contributions independent of the plan's funded position.

Conversions to TBPs

A number of issues remain regarding the possible conversions of defined benefit plans to TBPs, including the following:

- The New Act and New Regulation do not allow for retroactive conversions of defined benefit plans to TBPs. In April 2014, Bill 10, the *Employment Pension (Private Sector) Plans Amendment Act, 2014*, was introduced in Alberta to allow retroactive conversion of previously accrued defined benefit pensions to TBP pensions. However, Bill 10 is not in force and after Second Reading in May 2014 it was referred to the Standing Committee on Alberta's Economic Future, which is expected to report in the fall of 2014. Therefore, as of September 1, 2014, plans may only convert their defined benefit provisions to TBP provisions for future service.

- The restriction on past service conversions also applies to specified multi-employer plans (SMEPs). SMEPs already exhibit many of the characteristics of TBPs. Many SMEP trustees had been hoping to convert their SMEPs to TBPs to address current solvency funding issues however, a TBP conversion for only future service means these plans will still be subject to the current solvency funding rules for past benefits.
- The New Regulation outlines what information and disclosure must be provided to the Superintendent and affected members upon a conversion to a TBP. At least 30 days before a conversion amendment is filed with the Superintendent, the plan administrator must provide notice of the conversion to all affected members.

Funding of TBPs

New rules for funding of TBPs include the following:

- For a TBP contributions for a provision for adverse deviation (PfAD) must be made in addition to the normal cost contributions. The New Regulation stipulates the amount of the PfAD, which is equal to a percentage of the normal cost. Under the New Regulation the PfAD percentage is based the TBP's target equity investment allocation and the going concern discount rate in relation to a benchmark discount rate. The PfAD formula is identical to the formula proposed in the position paper issued in 2013 by the Alberta Treasury Board and Finance concerning target benefit funding rules, except the adjustment for rebalancing, diversification, and expenses has been increased from 0.25% to 0.40%. The additional funding for the PfAD would begin three years after the conversion to a TBP.
- Benefit improvements (including those intended to be permanent or temporary pension increases to retirees) may only be granted once the TBP has sufficient "accessible going concern excess" assets, which would be:
  - the actuarial value of assets, **less**
  - the target benefit provision's going concern actuarial liabilities increased by the same PfAD percentage described above, **plus**
  - the present value of future contributions to the next actuarial valuation date in excess of the normal cost and required PfAD, **plus**
  - the amount the fair value of assets exceeds the actuarial value of assets.
- If the expected contributions would be insufficient to pay for a target benefit provision, there must either be an increase in contributions or the plan must be amended to adjust the target benefit provision.
- When preparing an actuarial valuation report, stress testing is required for elements that, in the actuary's opinion, pose a material risk to the plan's ability to meet its funding requirements. There is no legislated obligation to fund a TBP based on the results of the stress testing.

Commuted value calculations for TBPs

New rules have been added for the calculation of commuted values under TBPs. The commuted value must be determined in accordance with the actuarial assumptions used to determine the going concern liabilities of the TBP. Further, the commuted value will be multiplied by the TBP provision funded ratio, if the ratio is less than 1.

Governance

Every plan must establish a governance policy by August 31, 2015. The policy does not have to be filed with the Superintendent, but must be available upon request. Every plan with a defined benefit provision or a target benefit provision must establish a funding policy by August 31, 2015. The policy does not have to be filed with the Superintendent, but must be available upon request.

Plan administrators will need to conduct an annual review of their plans to confirm they comply with the plan text, the plan's policies and the New Act. The results of this annual review should be documented in writing. There is no requirement to file the written assessment with the Superintendent; but it should be maintained, in case it is requested at a later date by the Superintendent. The plan assessment must be completed within 365 days of the end of the plan fiscal year. The first plan assessment will be required for first full fiscal year after September 1, 2014.

Contributions and fundholders

Administrators must file a new summary of contributions form. Form 21 – Schedule of Expected Contributions - must be filed with the fundholder within 30 days after the beginning of each fiscal year of the plan. A collectively bargained multi-employer plan will not be required to file a summary of contributions form.

The fundholder must monitor the contribution remittances and compare against the summary of required contributions on a quarterly basis. Where the comparison reveals that the remitted contributions are less than 90% of expected amounts, the fundholder must notify the Superintendent within 45 days after the end of the quarter. The fundholder must notify the Superintendent within 15 days after the end of the month if no contributions were received.

Disclosure requirements

The New Regulation introduces new member statements and expanded disclosure obligations, many aimed at increasing awareness of member rights and responsibilities.

New statements

New statements include the following:

- annual statements for retired members,
- statements showing the value of the benefit to be split upon notice of marriage breakdown,
- statements to a non-member spouse outlining their benefit payment options under the plan, and
- statements to members who have elected to commence phased retirement under the plan.

Expanded disclosure

New requirements for existing disclosure statements include the following:

- Member statements must now include information on the right to examine plan records, contact information for making an application to start receiving benefits, information outlining the member's obligation to provide notification of new contact information, and the jurisdiction under which benefits are determined.
- Plan summaries must now include the plan's name, CRA registration number, and the plan administrator's name and contact information.
- New spousal waiver forms that address each situation separately, to provide better clarity of what is being waived.
- New requirements now apply for participation agreements for non-collectively bargained multi-employer plans.

Jointly sponsored pension plans (JSPPs)

Under a JSPP, active plan members and participating employers share in the total funding of the plan, including special payments toward solvency and going concern deficits. The New Regulation includes the following in respect of JSPPs:

- The JSPP administrator must be a board of trustees, or other similar body acceptable to the Superintendent, with at least 50% of the trustees being appointed by the plan members.
- The JSPP documents must set out how individuals responsible for governance will make decisions on governance, and the appointment or selection of the members of the board or body which will administer the JSPP.

- Where an actuarial valuation report requires an increase in contributions in respect of a JSPP, the increase may be delayed until the second fiscal year following the review date.

Plans for connected persons

Plans where all members are connected persons continue to be exempt from registration with the Superintendent. The application of the New Act and the New Regulation to these plans will include the following:

- Rules will continue to apply for immediate vesting, locking-in, minimum spousal benefits upon death, and the division and distribution of benefits upon marriage breakdown.
- Unlike the rules prior to September 1, 2014, the prescribed funding and contribution requirements will no longer apply.
- Designated plans where not all members are connected persons continue to be subject to all of the provisions of the New Act and New Regulation.

Defined contribution (DC) plans

DC plan texts must state whether the member, the administrator, or both, are responsible for directing the investments. If members make decisions regarding the investments, the default option must now be a balanced fund or a target date fund.

Immediate vesting

All members of a pension plan will become immediately vested as of September 1, 2014. As a result of immediate vesting, partial plan terminations and corresponding reports have been eliminated.

Unlocking

All plans must provide for unlocking of a member's pension benefit in the case of considerably shortened life expectancy, non-residency status, and small benefits (commuted value of benefits less than 20% of the Year's Maximum Pensionable Earnings for the calendar year). The ability to unlock a benefit where the annual pension is less than 4% of the YMPE has been eliminated.

Plan amendments

New prescribed forms must be used when filing plan registrations and amendments. The Superintendent may refuse to register an amendment to a defined benefit provision that reduces the plan's solvency ratio to less than 90%.

There is no longer a requirement to provide advance notice of an adverse amendment. Rather, notice must be provided to members within 30 days of registration of the amendment. However, 30 days advance notice must be provided to members whenever there is a change to member required contribution rates.

Filing fees

Annual information return filing fees will now be based on the total number of plan members (previously these fees were based on active members only). The minimum fee has increased from $200 to $250, and the maximum fee has increased from $20,000 to $75,000.

Actuarial valuations and cost certificates

New rules for actuarial valuations and cost certificates include the following:

- Triennial actuarial valuation reports and cost certificates must now be filed no later than 270 days after the review date. Previously, the deadline was 180 days for non-SMEPs and non-multi-unit plans.
- An employer may no longer cease making contributions while an actuarial valuation report is being prepared. Contributions must continue in accordance with the previous actuarial valuation report until the new actuarial valuation report is filed.

Audited financial statements

The threshold for filing audited financial statements for plans with a defined benefit provision or a target benefit provision has been increased from plan assets of $3 million to $10 million. All collectively bargained multi-employer plans must continue to file audited financial statements regardless of the value of plan assets. The requirement to file audited financial statements for pension plans with only a defined contribution component has been eliminated.

Solvency reserve account

Employers may establish a solvency reserve account to hold special payments to amortize solvency deficiencies. If the plan's solvency assets exceed 105% of the plan's solvency liabilities, the employer may apply to the Superintendent to withdraw a portion of the excess subject to meeting the following requirements:

- The application is made within one year of the effective date of the actuarial valuation report that discloses the excess.
- The annual withdrawal cannot exceed 20% of the excess and is only available for the three fiscal years following the actuarial valuation report date.
- Withdrawals are not permitted if they would result in an unfunded liability.
- Notice is given to all active members and retired members on their respective annual statements.

Contribution holidays and withdrawals

If the plan's going concern assets exceed 105% of the plan's going concern liabilities, the employer may apply to the Superintendent to withdraw a portion of the excess or use a portion of the excess as a contribution holiday if all the following requirements are met.

- The application is made within one year of the effective date of the actuarial valuation report that discloses the excess.
- The plan terms permit such a withdrawal/ contribution holiday.
- The annual withdrawal/contribution holiday cannot exceed 20% of the excess and is only available for the three fiscal years following the actuarial valuation report date.
- Withdrawals are not permitted if they would result in a solvency deficiency.
- Notice is given to all active members and retired members on their respective annual statements in the case of a contribution holiday.
- Advance notice is given to all active members, deferred vested members, retired members, and applicable trade unions, in the case of a withdrawal of actuarial excess.
- Withdrawal of actuarial excess or contribution holidays from the target benefit component of a plan is not permitted.

Marriage breakdown

The total entitlement subject to division on marriage breakdown will be equal to the commuted value of the member's defined benefit pension, assuming the member terminated membership on the marriage breakdown date, and taking into account any early retirement benefits available to the member. Previously, the commuted value assumed the member commenced pension at the member's unreduced retirement date.

If the pension was already in pay, the non-member spouse's entitlement must be converted to a pension for the non-member spouse's lifetime based on the non-member spouse's age, or if the plan permits, transferred out of the plan. The maximum fees plan administrators may charge for marriage breakdown calculations have doubled.

Recalculation of commuted values

The commuted value must be re-determined if the payment of the commuted value occurs more than 180 days after the date the commuted value was originally calculated. Previously, plan administrators had the option of recalculating the commuted value after 120 days.

Missing persons

New procedures apply for transferring benefits payable to missing persons to Unclaimed Property, including what specific information must be provided to satisfy the Superintendent that a person is missing.

Administrative penalties

The Superintendent may impose administrative penalties up to $50,000 (for an individual) and $250,000 (for a corporation) for non-compliance of certain sections of the New Act and New Regulation.

Concluding comments

Plan administrators must comply with the New Act and New Regulation as of September 1, 2014, and according to the timelines outlined below. The Superintendent's office has published an Update document titled "New Legislation – Administrative Information and Checklists" which will be useful to plan administrators in their implementation of the new provisions. Additional guidance will be available in a series of Interpretive Guidelines which, when published, will replace the existing Policy Bulletins. **Administrators will need to act quickly, and work with their advisers, to ensure that their plans are amended to reflect the new requirements by December 31, 2014.**

Deadlines

Plans must be administered to comply with the new laws on September 1, 2014, and the following timelines also apply:

October 1, 2014

- All plans, other than collectively bargained multi-employer plans, must provide fundholders with a revised summary of contributions form no later than October 1, 2014.

December 1, 2014

- Plan amendments to reflect required plan provisions must be filed no later than December 31, 2014.
- For defined contribution plans or plans where members make decisions regarding the investments, the plan administrator must implement the new default investment option no later than December 31, 2014.
- New statements and required disclosure information must be in effect no later than December 31, 2014.

June 1, 2015

- Participation agreements for non-collectively bargained multi-employer plans need to be amended to comply with new requirements no later than June 1, 2015.

August 31, 2015

- Governance and funding policies must be in place no later than August 31, 2015 and the first annual plan assessment will apply within 365 days of the end of the first full fiscal year after September 1, 2014.

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