MERCER

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COMMUNIQUÉ

NOVA SCOTIA INTRODUCES NEW PENSION BENEFITS ACT

On December 15, 2011, Nova Scotia Bill 96, the *Pension Benefits Act*, received Royal Assent. It will take effect when proclaimed in force, which is expected to happen in the spring of 2012. The Nova Scotia Department of Labour and Advanced Education also issued draft regulations relating to the new legislation.

Once in force, Bill 96 will make many material changes to Nova Scotia pension standards and regulatory requirements. This Communiqué will be of interest to anyone responsible for a pension plan registered in Nova Scotia or having Nova Scotia members. It will also be of interest to Nova Scotia employers who may be considering implementing an alternative pension plan design.

Background

Bill 96 is the result of an extended process of pension review and consultation that began in Nova Scotia in 2007 and it represents a significant update to the current *Pension Benefits Act* (Act), which came into force on January 1, 1988. Although the Act has seen a variety of *ad hoc* amendments since that time, this is the first broad-based revision of the legislation since 1988.

The changes in Bill 96 reflect some of the recent pension reform changes seen elsewhere, particularly in Ontario, but also include measures unique to Nova Scotia.

Summary of Changes

The following are the major differences in Bill 96 from the current Act:

Recognition of New Types of Pension Plans

Jointly-sponsored pension plans (JSPPs) and target benefit pension plans (TBPPs) are allowed.

A JSPP is a contributory defined benefit plan in which members must contribute towards any going concern unfunded liability or solvency deficiency. JSPPs are not subject to the terminal funding requirements of the Act on full or partial wind-up and can reduce benefits. JSPPs can also opt out of wind-up "grow-in" benefits.

A TBPP is a plan that provides benefits that are not defined contribution benefits, but which limit employer contributions to an amount fixed under one or more collective agreements. TBPP administrators can reduce benefits accrued under the plan if this is required because of the plan's financial position.

Special disclosure requirements and additional prescribed criteria would apply to both JSPPs and TBPPs.

Revised Definition of "Spouse"

A separate definition for "common-law partner" will be eliminated and, instead, common-law partners are included in the definition of "spouse". Generally, people will qualify as "spouses" if they are married to each other or have registered a domestic partnership under the *Vital Statistics Act*, or, if not married to each other, if they cohabit in a conjugal relationship for three years if either partner is married to someone else, or one year if neither partner is married.

Under this revised definition, a member can have more than one spouse at the same time. Bill 96 does not specifically address the issue of priority resolution between competing spousal claims. This might be addressed in upcoming regulations.

Immediate Vesting for all Benefits

All accrued pension benefits will vest immediately, eliminating both "45 and 10" vesting for pre-1988 benefits and the 24-month membership vesting rule for post-1987 benefits.

LIF-type Benefits from DC Plans

Defined contribution plans will be permitted to pay "LIF-type" benefits directly, in the manner permitted under the *Income Tax Act*.

Pre-retirement Death Benefit

The minimum benefit payable on death before retirement will be100% of the commuted value of the individual's accrued benefits (from the current minimum of 60%). The spousal priority to pre-retirement death benefits will remain, but there will be a limited spousal waiver of such entitlements.

Small Benefit Limit Increased

A pension plan will be able to commute (that is, pay as a lump sum) benefits payable to a former member or retiree where the annual pension payable is not more than 4% of the year's maximum pensionable earnings under the Canada Pension Plan (YMPE) or where the commuted value of benefits is less than 20% of the YMPE in the year of termination of employment (up from the current 10%).

Contribution Holidays

Contribution holidays (for both employers and members) may be taken if a plan has a surplus, the plan terms allow for a contribution holiday, and other prescribed requirements are satisfied.

Letters of Credit

Prescribed employers may be entitled to use letters of credit in lieu of contributions to fund solvency deficiencies, subject to a variety of requirements. These include an overall limit of the face value of the letter of credit to 15% of solvency liabilities and a prohibition against paying certain fees associated with the letter of credit from the pension fund.

Refund of Overpayments

Certain overpayments to employers may be refunded if the Superintendent of Pensions consents.

Partial Wind-ups

Unlike the changes to Ontario pension standards legislation on which the Nova Scotia reforms are largely based, partial wind-ups will not be eliminated. There will, however, be no requirement to purchase annuities to settle benefits in a partial wind-up situation.

Grow-in

The so-called "grow-in" rules that provide enhanced early retirement benefits to some members on full or partial plan wind-ups will be maintained. However, as noted above, JSPPs can opt out of the requirement to pay these benefits.

Surplus

The surplus withdrawal provisions will be revised, though the basic rules which allow an employer access to surplus based on contractual entitlement or written agreement with a specified proportion of plan beneficiaries will be maintained. An ongoing plan must retain surplus equal to the greater of twice the normal cost of the plan plus 5% of plan liabilities, and 25% of plan liabilities, all calculated as prescribed. Employer surplus withdrawal will remain subject to prior consent from the Superintendent of Pensions, and specific notice and regulatory filing requirements.

Asset Transfers

A variety of provisions regarding asset transfers between pension plans are revised, though many of the details will be set out in regulations. Of note, where a successor employer with a pension plan for transferred employees seeks to transfer assets from the original pension plan, the transfer must include a portion of any surplus.

Distressed Plans

There will be provisions relating to compromises, arrangements or agreements made under the *Companies' Creditors Arrangement Act* and the *Bankruptcy and Insolvency Act*.

Valuation Reports

The Superintendent of Pensions will have the authority to require a new valuation report, including the authority to specify methods and assumptions for its preparation. This authority will apply where the Superintendent is of the opinion that a report does not meet the requirements under the Act, the methods and assumptions used in the report are not consistent with accepted actuarial practice, or the assumptions or methods used are inappropriate in the plan's circumstances (even if they are consistent with accepted actuarial practice).

Other Changes

Bill 96 includes a wide variety of other changes, including the following:

- Variation of payment on shortened life expectancy rules;
- Plan amendment notice and restrictions;
- Requirement to provide a contribution summary to a trustee to facilitate monitoring of contribution remittance;
- Phased retirement;
- Spousal waivers;
- Orders and appeals;
- Record retention obligations;
- Retiree rights, including a right to participate in pension advisory committees; and
- Penalties for offences.

Regulations

In early December, the Department of Labour and Advanced Education released, in draft form, some of the related regulations to the revised Act in draft form. Interested parties can provide feedback to these draft regulations up to January 31, 2012. The draft regulations mainly address funding and disclosure rules.

Funding requirements, in particular, are of critical concern to many plan sponsors. In general terms, the draft regulations include the following funding provisions:

- Funding rules will remain the same for regular single employer plans;
- Municipal and university plans will keep the same temporary funding relief provisions;
- JSPPs will be required to fund to 80% solvency;
- Future indexing must be included for funding purposes; and
- Annual valuations will be required for plans that have a solvency asset to liability ratio of less than 0.85.

Interested parties should review the draft regulations and provide any feedback and suggestions to the Department of Labour and Advanced Education by the January 31, 2012 deadline. It is not known if other regulations relating to Bill 96 will be released in draft form for comment in advance.

Comment

Once Bill 96 is proclaimed in force, plans must be administered in conformity with the new requirements. However, plan sponsors will have up to three years to formally amend plan documents to comply with the new provisions.

Bill 96 will require extensive revisions to plan documents and administrative practices. It may also result in changes to fundamental governance structures and plan design for organizations wishing to take advantage of the opportunities presented by the new JSPP and TBPP options. Interested parties should pay careful attention to the regulations, since the details of any improved funding requirements or plan design will be found there. Given this, the opportunity to comment on draft regulations will be useful to plan sponsors and administrators as well as for the regulator and we hope that the public will be given the opportunity to comment on the remaining regulations before they are finalized.

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