COMMUNIQUÉ

4 June 2015

CHANGES TO NOVA SCOTIA PENSION RULES

Nova Scotia has recently released updated pension benefits regulations (Regulations) to accompany an updated *Pension Benefits Act* (the Act). The Regulations and the majority of the Act came into force on 1 June 2015.

This Communiqué will be of interest to anyone responsible for a pension plan registered in Nova Scotia or having Nova Scotia members participating in a pension plan that is registered in another jurisdiction. It will also be of interest to those in Nova Scotia who are considering transitioning to or implementing an alternative pension plan design, such as a jointly-sponsored pension plan.

Background

Although Nova Scotia's pension legislation has seen *ad hoc* amendments from time to time, this is the first broad-based revision of the legislation since 1988.

The implementation of new pension rules in Nova Scotia is the culmination of an extensive pension review process that began in 2007. The Act received Royal Assent in December 2011. (Please refer to our Communique of 10 January 2012.) However, the Act was not proclaimed into force until 2015, as work continued on the accompanying Regulations.

Partial draft Regulations were issued for review and comment in the intervening period. The final regulations reflect some of the content previously released in draft form, as well as a significant amount of new content.

Most of the provisions of the Act took effect on 1 June 2015. However, some provisions, such as those relating to target benefit plans, distressed plans, and restrictions on amendments, will come into force at a later as yet unspecified date.

Sponsors of plans registered in Nova Scotia must administer their plans in conformity with the new rules starting 1 June 2015, but will have until 1 June 2018 to file amendments required as a result of these changes.

Summary of Changes

The material changes that took effect on 1 June 2015 include the following:

Revised definition of spouse

The new Act revises the definition of spouse and eliminates a separate definition of common-law partner by capturing such relationships within the definition of spouse. Under the new definition of spouse (in general terms) a person will qualify if: he or she is married to the member or has registered a domestic partnership with the member under the *Vital Statistics Act*, or if he or she has cohabited with the member in a conjugal relationship for at least the required minimum periods: three years if either person is married, or one year if neither person is married.

Under this revised definition, it is possible to have more than one spouse at any given time (one by marriage and another through co-habitation in a conjugal relationship for three years). We expect the requirements for establishing spousal status to pose a challenge for administrators, as the new rules do not directly address the issue of spousal priority among competing claims.

Recognition of new types of pension plans

The revised rules allow for jointly-sponsored pension plans JSPPs.

A JSPP is a plan providing contributory defined benefits in which members are also required to contribute towards any going concern unfunded liability or solvency deficiency. JSPPs will not be subject to the terminal funding requirements of the Act on full or partial wind-up and instead, will be permitted to reduce benefits. JSPPs may also opt out of grow-in benefits applicable on wind-ups.

Immediate vesting for all benefits

The revised rules include immediate vesting of all accrued pension benefits. This eliminates the current 45 and 10 rule for pre-1988 benefits and the 24-month membership rule for post-1987 benefits.

Actuarial valuations

Plans with solvency concerns will now be required to file an actuarial valuation annually. This will generally apply where the solvency ratio of a plan (other than a designated plan or a specified multi-employer plan) is less than 85% and will apply for reports prepared on and after 1 June 2015. The 80% threshold for JSPPs found in earlier draft versions of the Regulations has been removed. The filing deadline for reports will be reduced to 9 months from 12 and filings must be accompanied by a new form, the Actuarial Information Summary.

Smoothing of assets continues to be permitted for solvency purposes. However, the new Regulations now require that the solvency interest rates used to calculate solvency liabilities also be averaged over the same smoothing period.

Payment of new special payments identified in a valuation report can be delayed for up to twelve months following the valuation date. Solvency gains may now only be used to shorten an amortization period, not to reduce the payment amount.

Transfer ratio and transfer deficiencies

The calculation of the transfer ratio has changed. The new Regulations define the transfer ratio as essentially the ratio of market value of assets to wind-up liabilities (including grow-in benefits and escalated adjustments for pre-June 2015 accruals). Plans with significant grow-in benefits and escalated adjustments will see their transfer ratios drop substantially.

More prescriptive rules have been added to govern situations where the administrator knows or ought to know that the transfer ratio has declined. The transfer ratio must be re-determined if it declines by 10% or more, if the transfer ratio is below 1.0, or if it has declined to 0.9 (if the transfer ratio had previously been 1.0 or greater).

Administrators may make full commuted value transfers even if the transfer ratio is below 1.0 provided that either the transfer deficiency has been remitted to the plan or that the aggregate of all such transfer deficiencies since the last review date is less than 5% of plan assets. The previous condition that individual transfer deficiencies be less than 5% of the YMPE has been eliminated.

Solvency relief

Previously enacted solvency relief applicable for valuation dates between 3 January 2011 and 2 January 2014 is still in place, as are the solvency exemptions available for certain types of plans (*e.g*., universities, municipalities).

Member statements

New content is required in annual member statements and termination statements. For annual member statements, the new content is primarily related the funded position of the plan (*e.g*., solvency ratio, special payment information). For instance, for multi-employer pension plans or any other negotiated contribution plan with fixed employer contributions, the annual statement must include a notice that benefits may be reduced. These changes will apply for statements relating to plan years ending on and after 1 June 2015.

Inclusion of escalated adjustments in solvency valuations

Under the Act, escalated adjustments accruing on and after 1 June 2015 must now be included when calculating solvency liabilities, and must be funded on both going concern and solvency bases. Plans may continue to exclude certain other items, including grow-in benefits and prospective benefit increases.

Audited financial statements

Audited financial statements will be required for all multi-employer pension plans and any other plans (DB or DC) with assets over five million dollars, except where assets are held by a single insurance company or in pooled funds held by a single trust company.

Restrictions on portability after normal retirement date

The Act incorporates a new defined term, retired member, which includes a member who has reached his normal retirement date but has not yet elected to commence a pension under the plan. Because the portability provisions of the new Act only extend portability to former members and not retired members, such retired members may not be entitled to transfer the commuted value of their pensions out of the plan. These provisions mirror provisions adopted in Ontario in

2012, which raised questions regarding the application of such a provision in the context of a defined contribution plan. We expect similar issues to arise in Nova Scotia. Of note, the small pension commutation provisions extend commutation to both former members and retired members.

LIF-type benefits from DC plans

Defined contribution plans are now 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 increase to 100% of the commuted value of the individual's accrued benefits (from the current minimum of 60%), but this may exclude the value of bridge benefits, if applicable. Spousal waivers in the form approved by the Superintendent are now permitted.

Small benefit limit increased

A pension plan may commute (pay in 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 10%). Additionally, a survivor pension may now be commuted if it falls below the small benefit threshold.

Contribution holidays

The Act confirms the right to contribution holidays (for both employers and members) where a plan has a surplus, the plan terms allow for the contribution holiday, and other prescribed requirements are satisfied.

Letters of credit

Prescribed employers are 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 15% of solvency liabilities and a prohibition against paying fees from the pension fund associated with obtaining, holding, amending or cancelling the letter of credit.

Partial wind-ups

The Act preserves partial wind-ups and clarifies that there is 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 are maintained. However, as noted above, JSPPs can opt out of these benefits.

Surplus

The Act re-writes the surplus withdrawal provisions, but maintains the basic rules which allowed employer access to surplus based on contractual entitlement or written agreement with a specified proportion of plan beneficiaries. An ongoing plan must retain surplus equal to the greater of twice the normal cost of the plan plus 5% of plan liabilities, or 25% of plan liabilities, all

calculated as prescribed. Employer surplus withdrawal remains subject to prior consent from the Superintendent and specific notice and regulatory filing requirements.

Revised regulatory forms

A variety of updated regulatory forms approved by the Superintendent have also been released. These are available online.

Comment

A significant area of administrative complexity will be the provisions of the Act addressing spousal priority in the event a member has a spouse by marriage and at common law. The regulator has indicated that there are no current plans to amend the Act to clarify the requirements in this regard. Plan administrators will need to consider how to administer survivor pensions and other death benefits where competing spousal entitlements arise.

Additionally, plans that previously provided portability to members on or after normal retirement date may need to amend their plans to restrict portability for such members in Nova Scotia and similarly revise their administrative practice. This change could adversely impact plan members who have continued working past their normal retirement date with the expectation of having access to portability at any age.

As previously noted, plan amendments that are necessary to comply with the new Act must be filed by 1 June 2018. Mercer will provide further analysis of the Act and Regulations once the remaining provisions of the Act have come into force and any outstanding regulations have been drafted.

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