FTR Now

COVID-19 – Continuity of Pension Plan Administration and Related Regulatory Flexibility

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During these uncertain times, pension plan administrators must continue to administer their pension plans and provide benefits to members, former members and retired members. Employers and pension plan administrators face a number of upcoming filing and disclosure deadlines and may have challenges in meeting those deadlines as a result of the COVID-19 pandemic.

In response to industry questions about ongoing pension plan administration, both the Ontario pension regulator, the Financial Services Regulatory Authority of Ontario (FSRA) and the federal pension regulator, the Office of the Superintendent of Financial Institutions (OSFI), have published guidance that will be of assistance in navigating the weeks to come.

In this *FTR Now*, we have summarized the respective guidance of FSRA and OSFI for employers and pension plan administrators of (i) Ontario-registered pension plans, and (ii) federally regulated pension plans with respect to challenges posed by the COVID-19 pandemic.

Guidance for Ontario-Registered Pension Plans

Extensions for Filing Deadlines

Pension plan administrators have numerous filing deadlines in each year. Annual information returns and financial statements, for example, must be filed within six months of the end of a pension plan's fiscal year. For many plans, that results in a June 30, 2020 filing deadline. Where a pension plan must file an actuarial valuation, the valuation must be filed within nine months of the date on which the plan is being valued. For example, if a plan is valued on December 31, 2019, the valuation report must be filed by September 30, 2020. Failure to comply with filing deadlines can result in administrative penalties under the PBA.

In light of the current COVID-19 crisis, FSRA has confirmed that plan administrators may request 60 day extensions to their applicable filing deadlines if required. Section 105 of the *Pension Benefits Act* (PBA) allows pension plan administrators and their authorized agents to request a filing extension of up to 60 days beyond the prescribed timeline under the PBA. These requests may be made using the FSRA Pension Services Portal (PSP).

The PBA also authorizes FSRA to consider requests for extensions beyond 60 days. If a plan administrator believes that more than 60 additional days will be required, FSRA has advised that the request should be submitted in writing to the pension plan's assigned Pension Officer. As FSRA staff are currently working from home to support physical distancing efforts, FSRA has indicated that its preference is for all submissions to be made by email, though mail continues to be permitted.

In addition, FSRA has acknowledged that some employers may experience challenges filing their Pension Benefits Guarantee Fund (PBGF) assessment certificate or paying their PBGF assessment due to COVID-19. FSRA has encouraged employers in these circumstances to contact their Pension Officer as soon as possible to discuss their individual circumstances and relief that can be provided.

Statement Deadlines – Foregoing Penalties

In addition to prescribed filings that may be required during the current crisis, FSRA also acknowledged that many annual member statements may be due shortly. Annual member statements, which contain prescribed information regarding members' accrued benefits or total account balances, are due six months after a plan's year end. For most plans, this means that the 2019 statements must be distributed by June 30, 2020. Plan administrators must also distribute biennial former member and retired member statements and member statements upon retirement, termination or death. Since electronic communications are still not widely used due to longstanding restrictions in the PBA, most plan administrators still distribute hard copy statements. Failure to comply with distribution deadlines can result in an administrative penalty being levied under the PBA.

FSRA has acknowledged that many businesses are currently operating under business continuity plans, with more limited operational processes. However, FSRA does not currently have discretion to extend the prescribed deadlines for member statements (in contrast to their express authority to extend filing deadlines).

In the current circumstances, FSRA has advised that if a plan administrator or their agents expect to have difficulty complying with the prescribed distribution timelines, the plan administrator should advise their assigned Pension Officer, by email, as soon as possible. Where a plan administrator has advised FSRA of the challenges related to distribution of member statements, FSRA will not levy a summary administrative monetary penalty with respect to this non-compliance until further notice.

Approval for Payment of Commuted Values (CVs) May Be Required

The COVID-19 pandemic is having a significant impact on the economy, including the securities markets. Many investments have experienced considerable losses and the current events are adversely impacting pension plan asset values.

If the administrator of an Ontario-registered defined benefit pension plan is aware or ought to know that the transfer ratio of its pension plan has fallen by 10% or more since the most recently determined transfer ratio (or if the most recently determined transfer ratio was above 1 and it has fallen to 0.9 or less), there are restrictions on the ability to transfer full CVs out of the pension plan. If this trigger is reached, the administrator cannot transfer any part of the CV of a pension, deferred pension or ancillary benefit without obtaining FSRA's prior approval and certain conditions are met. Approval must be sought using Form 10, which is to be electronically submitted to the plan's assigned Pension Officer.

A plan administrator should ensure it is or its actuary is assisting it with monitoring the transfer ratio of the pension plan at least quarterly, in order to know whether the triggers for limits on CV transfers have been reached and FSRA approval is needed.

Even if approval is given, the administrator must continue to consider whether the total of all transfer deficiencies for transfers since the date of the last filed valuation is less than 5% of the market value of the assets of the plan.

Impact on FSRA's Day-to-Day Operations

FSRA has indicated that it is reviewing its ongoing work, stakeholder engagement activities and other commitments to prioritize activities and will communicate with the industry regularly.

With respect to ongoing work, FSRA is continuing to review all pending transactions, including asset transfers or plan wind-ups, but the industry should expect some delays to their service times. If an employer or plan administrator has any questions with respect to a pending transaction, they should contact their assigned Pension Officer (by email) or the general inquiries email (PensionInquiries@fsrao.ca).

New applications and other submissions should be submitted to FSRA electronically. However, if an employer or plan administrator has difficulties with electronic submissions, the assigned Pension Officer should be contacted in order to make alternative arrangements.

Guidance for Federally Regulated Pension Plans

Extensions for Filing Deadlines

On March 27, 2020, OSFI issued a letter to the pension plan industry about upcoming filing deadlines under the *Pension Benefits Standards Act, 1985* (PBSA) and the related Regulations. For pension plans with year ends between September 30, 2019 and March 31, 2020, OSFI has announced that regulatory filing deadlines are extended by three months. Normally, the deadline for the filing of prescribed documents and reports, such as the Annual Information Return, audited financial statements and actuarial report, are due six months after a plan's year end. Due to the COVID-19 crisis, these deadlines will be extended to nine months after a plan's year end for plans with year ends falling within the above mentioned window.

OSFI has also announced that annual assessments (i.e., the fee to be paid to OSFI) will not be issued until after the extended deadline has passed.

A similar three-month extension is being provided in respect of annual filings required for pooled registered pension plans that are regulated by OSFI.

Extensions for Annual Member Statements

OSFI has announced that the date for distributing annual statements to members and former members and spouses or common-law partners in accordance with the PBSA is also extended. The deadline for distribution of these prescribed notices is normally six months after the plan's year end. OSFI announced that the deadline for distribution of these statements for plans with year ends between September 30, 2019 and March 31, 2020 has been extended to nine months after the plan's year end.

OSFI recommends that plan administrators notify recipients of the delay in distribution if the normal deadline will not be met.

Temporary Freeze on CV Transfers and Annuity Purchases

For federally regulated pension plans, OSFI has announced a full freeze on CV transfers in light of the market impact of the COVID-19 crisis. OSFI has revised the Directives of the Superintendent pursuant to the PBSA effective March 27, 2020 to implement a full freeze on portability transfers and annuity purchases relating to defined benefit pension plans.

According to OSFI, transfers and annuity purchases are being prohibited to protect the benefits of plan members and beneficiaries in light of the current financial market conditions, which have negatively affected the funded status of pension plans. The freeze does not impact the payment of pensions to retirees and other beneficiaries.

OSFI intends to review this temporary measure in the coming months. During the temporary freeze period, administrators may request the Superintendent of OSFI's consent to a transfer or annuity purchase based on plan-specific or special circumstances.

Suspension of OSFI Consultations

OSFI also announced that it has suspended a number of consultation initiatives and policy development work related to new or revised guidance until conditions stabilize. This suspension impacts the consultations related to the instructional guides on

preparation of actuarial valuations and terminations of defined benefit pension plans. OSFI is delaying the posting of the final updated guidance on amendments that reduce benefits, but will continue to review the submissions received in respect of that prior consultation.

We are continuing to monitor all developments relating to COVID-19 and will provide further updates as they become available. We continue to be available to assist employers and plan administrators with the ongoing operation of their pension plans and can assist you with any submissions or communications with FRSA or OSFI, as applicable, including those relating to challenges arising due to the COVID-19 crisis.

If you have any questions, please contact any member of our Pension, Benefits and Executive Compensation practice group.