FTR Now

Ontario Budget 2009

Date: March 27, 2009

INTRODUCTION

Yesterday, Ontario's Minister of Finance introduced the 2009 Ontario Budget in the Legislature, which is optimistically titled "Confronting the Challenge: Building Our Economic Future".

The Budget aims to kick-start the battered Ontario economy through its twin centrepieces: tax reform and infrastructure spending. While much attention will be focused on the Budget's proposal to harmonize the federal Goods and Services Tax with the Ontario Retail Sales Tax, the Budget contains a number of key announcements in the area of pension reform.

This *FTR Now* highlights select Budget measures that are of particular interest to employers, human resources professionals and pension plan administrators.

PENSION REFORM MEASURES

SOLVENCY FUNDING RELIEF MEASURES

Perhaps the most important element of the Budget from an employer perspective is the expansion of the Government's December 16, 2008 announcement to implement solvency funding relief for Ontario pension plan sponsors.

The Budget provides additional detail regarding the proposed relief. As previously discussed in Hicks Morley's December 17, 2008 *FTR Now*, "Ontario Government Announces Pension Funding Relief", the amendments to the *Pension Benefits Act* ("*PBA*") regulations, if passed, would provide temporary solvency funding relief with effect retroactive to September 30, 2008.

Under the proposed solvency funding relief, when filing the first scheduled valuation report dated on or after September 30, 2008, a plan administrator would be able to elect to:

- consolidate existing solvency payment schedules into a new five-year payment schedule;
- defer catch-up payments for one year from the valuation date; and
- subject to consent (unless the pension plan is jointly governed, in which case consent is not required), extend the solvency payment schedule to a maximum of ten years for a new solvency deficiency determined in the report.

The Budget also provides that up to 10 years of going-concern special payments can be taken into account to determine the net solvency deficiency where the amortization period for solvency deficiencies is extended to a maximum of 10 years. If payment schedules are consolidated or extended, benefit improvements must be funded over a maximum of five years on both a going-concern and solvency basis.

The Budget sets out the applicable consent threshold, which was previously unknown. A plan sponsor must provide plan beneficiaries with enhanced notice providing the opportunity to object to the extension of the amortization period. The amortization period will only be extended if no more than one-third of the **aggregate** of all active, deferred and retired plan members indicate, before the start of payments, that they do not consent. This is a positive revelation, as it may ease the administration of the consent process and decreases the possibility that access to relief will be barred by an objecting group of retirees even though the active members of the pension plan support the plan sponsor's intention to extend the amortization period. Collective bargaining agents will be permitted to provide consent on behalf of their members.

The Budget also clarifies that, if an election is made to extend the amortization period, any "solvency excess" (presumably this means actuarial gains) identified in subsequent valuation reports can be used to reduce or eliminate the remaining special payments. However, the Budget also states that contribution holidays will not be permitted in plan years ending in 2010 to 2012, unless:

- an actuarial cost certificate, based on an approximation from the last full valuation report, is filed annually with Ontario's pension regulator, the Financial Services Commission of Ontario ("FSCO"), confirming the plan was in a surplus position at the start of the plan year; or
- the plan is a designated plan under the federal *Income Tax Act*.

Finally, the Budget confirms the Government's intention to adopt the Canadian Institute of Actuaries' revised Standard of Practice for Pension Commuted Values, which comes into effect on April 1, 2009. Solvency valuations as of December 12, 2008 will be permitted to use the revised standards.

Hicks Morley will continue to provide updates regarding Ontario's proposed pension solvency funding relief as the legislative process unfolds. For additional information on the temporary solvency relief measures being implemented across Canada, please click here.

COMPREHENSIVE PENSION REFORM

On October 31, 2008, the Ontario Expert Commission on Pensions released its final report, "A Fine Balance". The Budget sets out the next steps Ontario will take on the road to comprehensive reform, including the establishment of a Pension Reform Advisory Council to provide practical and focused feedback on specific pension reform proposals.

PHASED RETIREMENT

Until recently, tax rules prevented an employee from getting credit for additional service under a company pension plan once the employee commenced receipt of a pension. Amendments to the federal *Income Tax Act* changed this rule so that an employee who qualifies could receive a partial pension while continuing to accrue credited service under the company pension plan. To be eligible, an employee would have to be: (i) age 60 or older; or (ii) age 55 or older and eligible for an unreduced early pension.

Despite these changes to the tax rules, complementary amendments to the Ontario *PBA* are necessary before phased retirement is possible under an Ontario-registered pension plan. The Budget proposes the necessary amendments to the *PBA* to permit sponsors of Ontario-registered pension plans to amend their plan to permit phased retirement.

The proposed changes will not make phased retirement a mandatory plan provision; they will simply permit phased retirement. It is likely, however, that an employer that decides to amend its plan to permit phased retirement would be required to make it available to classes of employees, and would not be permitted to make phased retirement available to select individuals.

PENSION BENEFITS GUARANTEE FUND REFORM

In 1980, Ontario set up the Pension Benefits Guarantee Fund ("PBGF"). The PBGF is an insurance fund designed to protect defined benefit pension plan members in the event their plan is wound up with insufficient assets to pay promised benefits. The only such fund of its kind in Canada, the PBGF is funded through employer-paid premiums as required under the *PBA* and regulations.

Ontario's Expert Commission on Pensions recently recommended that the PBGF be reviewed to ensure premiums and benefits are appropriate, and to ensure the PBGF is governed on self-financing principles. The Budget announces that the Government will commission the first independent actuarial study of the PBGF since its inception.

Once this study is complete, the Government will consider establishing an independent agency to operate the PBGF. The Budget also signals that the *PBA* will be amended to clarify that PBGF benefits will only be available to the extent that the PBGF has assets to pay them. While the Government will have the option to make grants to the PBGF, it will not be required to bail out the PBGF in the event of one or more catastrophic plan failures.

DIVISION OF PENSIONS ON MARRIAGE BREAKDOWN

The Budget updates the status of Bill 133, the *Family Statute Law Amendment Act* ("Bill 133"), which proposes amendments to the *Family Law Act* and the *PBA* affecting the division of pensions on marriage breakdown. If passed, Bill 133 would introduce a system of immediate division of pensions following marriage breakdown and would simplify pension rules faced by members and spouses in the context of marriage breakdown.

The pension law changes proposed by Bill 133 will require the enactment of technical regulations. Bill 133 will not come into effect until those regulations are passed. The Budget announces upcoming stakeholder consultations with a view to developing the *PBA* regulations needed to implement Bill 133.

MODERNIZING THE REGULATION OF MULTI-JURISDICTIONAL PENSION PLANS

As discussed in this Hicks Morley *FTR Now*, on October 21, 2008, the Canadian Association of Pension Supervisory Authorities ("CAPSA") released the *Proposed Agreement Respecting Multi-Jurisdictional Pension Plans*, which aims to provide a clearer, more detailed framework for the administration and regulation of pension plans that have members in more than one Canadian jurisdiction ("multi-jurisdictional pension plans", or "MJPPs"). The Budget confirms Ontario's intention to adopt the final CAPSA agreement regarding the regulation of MJPPs.

FACILITATING PENSION COMPROMISES DURING CORPORATE RESTRUCTURINGS

Recent amendments to the federal *Companies' Creditors Arrangement Act* ("*CCAA*") facilitate compromises among insolvent companies, their creditors and unions with respect to pension funding. These arrangements can enable the insolvent company to "get back on its feet" while continuing to fund pension obligations. Such court-sanctioned compromises can require the approval of the relevant provincial pension regulator. The Budget confirms that the Government will bring forward amendments to the *PBA* to enable FSCO to review and approve pension arrangements agreed upon during *CCAA* restructuring proceedings.

ENHANCING PENSION REGULATION

The Budget announces that FSCO will dedicate 25 additional full-time positions to pension regulatory activities, in order to improve regulatory oversight and reduce backlogs for regulatory approvals.

OTHER MEASURES

BENEFICIARY DESIGNATION UNDER TAX-FREE SAVINGS ACCOUNTS

Tax-Free Savings Accounts ("TFSAs") were first announced in the 2008 Federal Budget, which is summarized in this Hicks Morley Client Update. The Budget proposes amendments to the *Succession Law Reform Act* of Ontario to allow the designation of beneficiaries under TFSAs. If this legislation is passed, designated beneficiaries could receive the proceeds of a deceased TFSA owner's account outside of a will, thereby avoiding Estate Administration Tax. Furthermore, employers that sponsor a group TFSA for Ontario employees will need to consider whether they have the appropriate beneficiary designation forms in place to facilitate beneficiary designation.

ACCESS TO LOCKED-IN ACCOUNTS

The Budget proposes to:

- enhance access to locked-in funds by permitting members to unlock up to 50% of their pension funds at the time of purchase of a "new" Ontario Life Income Fund ("LIF"), effective January 1, 2010 (currently only 25% of locked-in monies can be cashed out). Existing owners of a "new" Ontario LIF would have an opportunity to unlock an additional 25% of amounts previously transferred into their LIF account. Remaining "old" LIFs and Locked-in Retirement Income Funds ("LRIFs") would be harmonized with the updated new LIF rules; and
- temporarily waive financial-hardship application withdrawal fees for Ontario locked-in accounts. This two-year fee waiver would take effect for applications approved on or after April 1, 2009.

ONTARIO TEACHERS' PENSION PLAN MATTERS

In September 2008, the Government announced an agreement between the Ontario Teachers' Federation and the Ontario Teachers' Pension Plan Board to limit inflation protection of Ontario Teachers' Pension Plan ("OTPP") benefits earned on post-2009 service. For OTPP benefits earned on service on and after January 1, 2010, the OTPP will only adjust those benefits to account for 50% of any increase to the Consumer Price Index (CPI). Cost-of-living adjustments to benefits in excess of 50% of CPI will be contingent on the financial health of the OTPP fund.

The Budget proposes an amendment to the *Teachers' Pension Act* that would allow the Government and employers contributing to the OTPP to make targeted contributions to fund additional inflation protection when the OTPP is providing inflation protection at less than 100% of CPI.

The Budget also announces the Government's intention introduce legislation to enable the Ontario Teachers' Pension Plan Board to provide pension administration and investment services to other pension plans and institutional investors in the public sector.

QUESTIONS?

If you have any questions arising out of this *FTR Now*, please contact one of the members of our Pension & Benefits Group or your regular Hicks Morley lawyer:
