FTR Now

Ontario Pension Funding and JSPP Regulations Released

Date: May 27, 2011

On May 20, 2011, the Ontario government filed amendments to the *Pension Benefits Act* Regulations ("Regulations") that implement the first of many anticipated regulatory measures stemming from "Phase II" of Ontario's pension reform initiative. The amendments outlined in O. Reg. 177/11 are in support of earlier amendments to the *Pension Benefits Act* made by Bill 120, *Securing Pension Benefits Now and for the Future Act, 2010*. Specifically, O. Reg. 177/11 amends the Regulations with respect to:

- actuarial valuations,
- annual statements, and
- jointly-sponsored pension plans ("JSPPs").

In this *FTR Now*, we discuss how these amendments are likely to impact the funding and administration of Ontario pension plans.

TRIGGER FOR ANNUAL ACTUARIAL VALUATIONS

Effective June 1, 2011, the Regulations will be amended to change the threshold for triggering annual actuarial valuations.

Currently, the pension plan administrator must file an actuarial valuation at least once every three years, unless the pension plan has "solvency concerns", in which case an annual actuarial valuation is required. "Solvency concerns" exist under the Regulations where (i) the employer has excluded plant closure or permanent layoff benefits from liabilities in the actuarial valuation, or (ii) the pension plan has a ratio of solvency assets to solvency liabilities of less than 0.9 and its solvency liabilities exceed the plan's solvency assets by more than $5 million, or (iii) the pension plan has a ratio of solvency assets to solvency liabilities of less than 0.8. For most Ontario-registered pension plans, this effectively means that an annual actuarial valuation is required where the plan is less than 90% funded on a solvency basis.

The amendments to the Regulations will change the definition of "solvency concerns". Specifically, solvency concerns will exist, and annual actuarial valuations will be required, where:

(i) the employer excludes plant closure benefits or permanent layoff benefits from liabilities in the actuarial valuation;

(ii) the ratio of solvency assets to solvency liabilities is less than 0.8, if the valuation date is before December 31, 2012; or

(iii) solvency liabilities exceed the solvency assets by more than $5 million and the ratio of solvency assets to solvency liabilities is

A. less than 0.9, if the valuation date is before December 31, 2010, or

B. less than 0.85, if the valuation date is on or after December 31, 2010 and before December 31, 2012.

Therefore, where the next actuarial valuation report must be filed effective as of December 31, 2010 or later, an annual valuation may not be required if the plan is funded more than 85% on a solvency basis (rather than 90%).

Effective December 31, 2012, the Regulations will be amended again to specify that annual actuarial valuations as of a date on or after December 31, 2012 for all pension plans (excluding JSPPs and specified Ontario multi-employer pension plans) will be required where the actuarial valuation either excludes liabilities in respect of plant closure or permanent layoff benefits, or is funded less than 85% on a solvency basis.

ENHANCED DISCLOSURE REGARDING FUNDING

Effective January 1, 2012, the prescribed requirement for pension plan annual statements will be amended. Annual statements will be required to include information regarding the transfer ratio of the pension plan set out in the two most recent actuarial valuations, and an explanation of the transfer ratio and how it relates to the level of funding of members' benefits. As these amendments to the Regulations are not effective until January 1, 2012, statements in respect of the 2010 plan year will not be required to contain this information. However, it is likely that annual statements for the 2011 plan year must contain this additional information.

JOINTLY-SPONSORED PENSION PLANS

The Regulations will also be amended, effective June 1, 2011, with respect to JSPPs. Specifically, JSPPs that existed on August 24, 2010 will not be required to fund a solvency deficiency as of a valuation date on or after December 31, 2010. While these plans must still prepare actuarial valuations, the actuarial valuation may deem any solvency deficiency to be a number not less than zero, such that special payments are not required with respect to the solvency deficiency.

Additional amendments to the Regulations are still necessary to implement both Phase I (Bill 236, *Pension Benefits Amendment Act, 2009*) and Phase II (Bill 120) of the Ontario pension reform initiatives. We continue to monitor regulatory developments, and will provide further updates when additional amendments to the Regulations are filed and effective dates of the amendments to the *Pension Benefits Act* are announced.

In the meantime, if you have any questions, please contact Natasha D. Monkman at 416.864.7302 or any member of our Pension & Benefits Practice Group.
