FTR Now

Pooled Registered Pension Plan Framework Introduced

Date: November 23, 2011

On November 17, 2011, the federal government introduced the much anticipated Bill C-25, *An Act relating to pooled registered pension plans and making related amendments to other Acts*, also known as the *Pooled Registered Pension Plans Act* (the "PRPP Act"). The proposed legislation follows high-profile consultations with the provinces and the industry, which resulted in the government first announcing, in December 2010, the creation of pooled registered pension plans ("PRPP") as an interim alternative to an expanded Canada Pension Plan. The PRPP is intended to provide a lower-cost option for smaller employers who might otherwise not offer employees a retirement plan. However, other employers may also be interested in the PRPP due to the perceived lower administration risks of participation.

This *FTR Now* reviews the highlights of the PRPP Act and summarizes key features that will be of interest to employers, and the financial institutions and insurance companies who may administer them.

WHAT IS A PRPP?

A PRPP is a new type of savings plan that will provide Canadians with another way to accumulate capital for retirement in a tax-assisted manner. They will operate much like defined contribution (DC) registered pension plans ("RPPs"), but will hold assets pooled together from multiple participating employers and will be administered by eligible licensed financial institutions, such as insurance companies and banks.

The PRPP is intended to address the existing gap in pension coverage by providing a new, accessible, large-scale and low-cost DC pension option to employers and the self-employed. An employer can offer a PRPP for employees who do not participate in an employer-sponsored retirement plan, including a group registered retirement savings plan. The legislative scheme places the bulk of the fiduciary risk of administration on the licensed institutions offering PRPPs, and reduces the risk and cost burden on employers that would normally accompany a decision to offer a retirement plan to employees.

KEY FEATURES OF THE PRPP ACT

The PRPP Act applies to employers who are federally regulated. Provincial governments will need to enact enabling legislation to permit provincially regulated employers to participate in PRPPs.

In many respects, the PRPP Act is similar to existing minimum standards pension legislation applicable to federally regulated RPPs, and will be regulated and enforced by the federal Superintendent of Financial Institutions (the "Superintendent"), or her provincial counterparts. However, the legal responsibility for administering a PRPP will not fall on the employer as is the case under minimum pension standards legislation.

REGISTRATION AND REGULATION OF PRPPS

Under the PRPP Act, the Superintendent is responsible for the regulation of PRPPs provided in respect of federally regulated employers. As with RPPs, federally regulated PRPPs will be registered with the Superintendent. The Superintendent will provide licences to the qualified entities (e.g., insurance companies, financial institutions) who can administer and provide PRPPs. PRPP administrators will be responsible for the overall design and operation of each PRPP registered with the Superintendent. It appears that PRPP administrators will be required to register the terms of each PRPP they offer. Employers would then select a PRPP and enter into a contract with the administrator outlining the terms of the employer's

participation in that PRPP.

It is not clear on the face of the PRPP Act how self-employed individuals will participate in a PRPP, but this may be clarified in the regulations that are required to support the PRPP Act and are anticipated to be released in 2012.

ADMINISTRATION AND INVESTMENT

The PRPP Act requires an administrator to act as a trustee. The administrator will be expected to adhere to a standard of care similar to the standard that applies to administrators of RPPs, which is generally understood to be a fiduciary standard. The PRPP Act states that the administrator bears the legal risks associated with administering a PRPP.

A PRPP can be designed to either permit members to make their own investment selections or to place that responsibility on the PRPP administrator. In a member-directed PRPP, the contributions of members who do not provide instructions will be invested in a default fund chosen by the PRPP administrator. The PRPP Act contains a “safe harbour” rule that applies to member-directed PRPPs. Administrators must offer investment options of varying degrees of risk and expected return that would allow a reasonable and prudent person to create a portfolio of investments that is appropriate for retirement savings. If the administrator provides a diverse range of options and satisfies the legislative and prescribed criteria, the administrator will be deemed to have complied with the standard of care governing the investment of the PRPP.

Administrators will have disclosure and reporting obligations that are similar to those that apply to RPPs.

EMPLOYER ROLE

Federally regulated employers are not required to provide a PRPP or to make contributions if it chooses to participate in a PRPP. However, if an employer chooses to make a PRPP available to its employees, it must only select a PRPP from among those licensed institutions offering PRPPs.

The PRPP administrator sets the member contribution rates, but a member can elect to contribute nothing by notifying the administrator. While the PRPP Act does not require employer contributions, an employer may elect to contribute and set the rate in its contract with the PRPP administrator. Contributions will be tax-deductible to the employee and employer, if applicable, subject to yet-to-be determined limits under the *Income Tax Act*. The employer will be deemed to hold any contributions deducted from employees’ wages or owing by the employer in trust in a manner similar to employers who provide RPPs; and insolvency legislation will be amended to provide for the priority of unpaid contributions in the event of the insolvency of the employer.

The PRPP Act relieves participating employers from liability for the acts or omissions of the administrator. Employer obligations appear to be limited to those set out in the PRPP Act (such as providing necessary information to PRPP administrators) or specifically agreed to in the contract with the administrator. However, employers who choose to offer a PRPP will nevertheless be taking on significant responsibilities for which they could be directly liable. These responsibilities would include:

- evaluating and selecting the PRPP provider;
- Pension Adjustment and tax reporting;
- enrolment of employees, providing notice of enrolment (unless the administrator agrees to provide them), and managing opt-out elections, and;
- deducting and remitting employee contributions and employer contributions, if any.

Employers may also be required to ensure that they satisfy other obligations set out in the Guidelines for Capital Accumulation Plans.

Despite the PRPP Act and the administrator licensing process, it is unclear whether the task of selecting the PRPP provider will require a degree of due diligence, and whether it may be necessary for the employer to regularly monitor the selected PRPP administrator in order to ensure its continued suitability.

AUTOMATIC MEMBER ENROLMENT

If an employer elects to participate in a PRPP for a class of employees, it must offer participation in the PRPP to all employees in that class. Further, eligible full-time employees will be automatically enrolled in the PRPP. Eligible part-time employees will be enrolled after 24 months of employment (unless the regulations permit the extension of the 24 month waiting period).

Although enrolment is automatic, as discussed further below, employees can opt-out within 60 days of receiving notice they have been enrolled in the PRPP. That notice must be provided “as soon as feasible” after an eligible employee is hired, and must inform the member of his or her right to opt-out. An employee who objects to enrolment on religious grounds must notify the employer, and the employer must take steps to ensure the employee is not enrolled, or removed if already enrolled. Employees who become members of a PRPP can notify the administrator, as discussed above, that they will not make contributions.

Under the PRPP Act, an employer must provide advance notice to its employees at least 30 days before entering into a contract with an administrator to provide the PRPP. The notice must be in writing and inform employees of: (i) the employer’s intention to participate in the PRPP; (ii) any existing business relationships it has with the PRPP administrator; and (iii) the right of any employee to object to being a member of the PRPP because of his or her religious beliefs.

Immediately after an employer enters into a contract to provide the PRPP, either the administrator or the employer must provide an additional notice to each eligible employee. The notice of participation must inform employees of their right to opt-out of the PRPP within 60 days of the date the notice is provided. The contract between the employer and administrator must specify who will be responsible for providing the notice to the employees.

After the notice is sent, the employer must begin deducting contributions from the members’ wages within 60 days from the notice, unless the member opts out.

PRPP BENEFITS

Member benefits under a PRPP will be immediately vested and locked-in. A PRPP can allow access to a member’s account in the case of disability and unlocking if the member’s account is below a certain threshold (20% of the Year’s Maximum Pensionable Earnings) on termination or retirement. If a member terminates employment, the member’s account may be transferred to another PRPP, a registered pension plan or prescribed retirement arrangement.

PRPPs can be designed, at the administrator’s election, to pay variable benefit (RRIF-like) pensions from the PRPP. Therefore, members, on retirement, can choose to either transfer their account balance or receive periodic payments from the PRPP.

If a member dies, the member’s spouse will be entitled to the value of the member’s PRPP account, in priority to a designated beneficiary or the member’s estate. A share of a member’s PRPP account can be assigned to a spouse on marriage breakdown, similar to the division of pension benefits under RPPs.

ANTICIPATED TIMELINE

The PRPP Act will work its way through the legislative process and could be amended before it is passed by Parliament. In addition, regulations must be enacted to provide some necessary detail and support for some of the PRPP Act provisions.

The government has also indicated that amendments to the *Income Tax Act* will be required, and it is anticipated that the proposed tax changes will be released in draft form for public consultation in the near future. As discussed above, in order for PRPPs to be available to provincially regulated employees, each province must adopt enabling legislation. Each province electing to offer PRPPs will likely also be required to authorize its existing provincial pension regulator to regulate and enforce provincially registered PRPPs.

A government spokesperson has indicated that it is anticipated that the provincial legislation and necessary tax rules will likely be in place sometime in 2012, as will the regulations required to support the PRPP Act.

We will continue to monitor the progress of the PRPP Act and related legislative or regulatory initiatives and will provide further updates as more details become available.

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.

The articles in this Client Update provide general information and should not be relied on as legal advice or opinion. This publication is copyrighted by Hicks Morley Hamilton Stewart Storie LLP and may not be photocopied or reproduced in any form, in whole or in part, without the express permission of Hicks Morley Hamilton Stewart Storie LLP. ©