FTR Now

CAPSA Releases Guideline on Defined Contribution Pension Plans

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On March 28, 2014, the Canadian Association of Pension Supervisory Authorities ("CAPSA"), the association which represents all Canadian pension regulators, released the final version of *Guideline No. 8: Defined Contribution Pension Plans*, ("DC Guidelines") along with an accompanying reference document. The DC Guidelines were issued following the circulation of a draft version and extensive public consultation.

This *FTR Now* discusses the DC Guidelines, which will be of interest to employers across Canada who offer their employees a defined contribution ("DC") pension plan, and/or a pension plan with a DC component, regardless of the regulatory regime applicable to the plan (collectively "DC plans"). The DC Guidelines do not formally apply to employer-sponsored registered retirement savings plans or deferred profit sharing plans.

SUPPLEMENTARY GUIDANCE

The DC Guidelines are intended to build on the existing legislative disclosure requirements for DC plans and the previous CAPSA Guidelines that apply to DC plans.

CAPSA's *Guidelines for Capital Accumulation Plans* ("CAP Guidelines") were released in 2004 to provide guidance applicable to any tax-assisted retirement savings plan, including DC plans, under which members are permitted to make investment decisions. The CAP Guidelines focus heavily on setting out the investment information and tools that administrators are expected to provide members to allow them to prudently direct the investment of their accounts. This includes disclosure of information to members (e.g., regarding default investment options, applicable fees and expenses, etc.).

CAPSA has also issued guidelines for pension plan governance, fundholder arrangements, and prudent investment practices, along with companion self-assessment questionnaires.

The CAPSA Guidelines listed above will continue to apply to DC plans, in addition to the new DC Guidelines.

SUMMARY OVERVIEW OF THE NEW DC GUIDELINES

The DC Guidelines summarize the responsibilities of plan administrators, employers, sponsors, third-party service providers, fund holders and members in connection with DC plans. However, the main focus of the DC Guidelines relates to enhancing members' understanding of all aspects of participating in, and retiring from, a DC plan. Importantly, the DC Guidelines also emphasize member responsibilities under the DC Plans, requiring member accountability for the decisions members make under DC plans, and for evaluating the sufficiency of their retirement savings on an ongoing basis.

The DC Guidelines document the expectation that administrators will communicate with members not only about their investment options and default investments, but also about other member choices, including the level of member contributions to the plan and the retirement vehicles available to provide retirement income after a member's participation in the DC plan ends.

In the DC Guidelines, administrators are also asked to consider periodically providing DC plan members with estimates or illustrations to help members assess whether the retirement income expected to be delivered by the DC plan is likely to be sufficient for their individual retirement goals. These disclosure suggestions go beyond the expectations previously communicated by CAPSA in the CAP Guidelines.

The DC Guidelines also provide clarification on the types of amendments to DC plans that would require advance notice to members in some jurisdictions.

Key aspects of CAPSA's guidance are explored below and may lead to changes to the manner in which administrators and third-party service providers communicate with DC plan members. Additionally, these new DC Guidelines may change the expectations placed on third-party service providers in designing and updating any retirement planning tools and providing members with information about retirement products.

DC PLAN MEMBER RESPONSIBILITIES

The DC Guidelines highlight various responsibilities of DC plan members. In addition to making ongoing investment decisions for DC plans that require employee investment choice, the DC Guidelines highlight members' accountability for assessing whether their retirement income needs will be met, and whether changes to their contribution amounts or investment selections under the plan are needed. The DC Guidelines also advise members to keep their investment instructions under the DC plan up to date.

Other important member responsibilities listed in the DC Guidelines include making contribution level decisions (where permitted under the terms of the DC plan), reviewing the retirement income options and selecting the option that best suits their individual needs.

CAPSA recommends that members consider obtaining qualified advice in respect of the decisions members are required to make under a DC plan in addition to utilizing the information the plan administrator provides to assist in investment decision-making and retirement income planning.

DC PLAN INFORMATION FOR MEMBERS

The DC Guidelines focus on information that DC plan administrators should provide to plan members during each phase of participation in a DC plan. The phases include the "accumulation" phase during which members are actively participating in the DC plan, the "de-accumulation" phase as members are approaching pay-out, and the "pay-out" phase during which members are in receipt of pension payments from the DC plan.

The DC Guidelines make it clear that obligations during the "pay-out" phase apply only to DC plans that provide benefit payments directly from the plan. The "pay-out" phase obligations do not apply to life annuities or other retirement income vehicles to which DC account balances are commonly transferred. Since there are currently very few DC plans that provide retirement income directly, we have focused on the guidance CAPSA provides for the "accumulation" and "de-accumulation" phases.

THE "ACCUMULATION" PHASE

During the "accumulation" phase, the DC Guidelines include a list of expectations for DC plan administrators in regard to member communications regarding investment choice (where applicable), contributions, account balances and projection tools.

In relation to contribution information, the DC Guidelines suggest the disclosure of:

- the formula for member and employer contributions;
- an explanation of options to maximize employer contributions;

- the timing and manner of deducting member contributions; and the treatment of required and voluntary contributions and amounts transferred into the plan.

The other information that DC plan administrators are expected to communicate to members include:

- how interest and earnings are applied within the DC plan account;
- the vesting and locking-in requirements applicable to the plan and circumstances in which contributions can be withdrawn; and amounts payable to the pension fund by the employer.

The DC Guidelines indicate that plan administrators "should consider providing members, periodically, with an estimate or a general illustration of the accumulated value of the member's account at retirement, as well as an estimate or example of the benefit that may result from the accumulated value." This disclosure is aimed at providing members with information to assist them in evaluating the sufficiency of their retirement savings. The CAPSA guidance does not address the frequency of this information, whether it could be generic (based on an average employee in the DC plan) or specific to the member's existing account balance and contribution rate. Further, the DC Guidelines do not indicate how the assumptions underlying how an account balance is converted to an estimated retirement income benefit should be determined for the purposes of the estimate or illustration. The DC Guidelines clearly indicate that any projections about account balances at retirement or future estimated retirement income are estimates only and all assumptions used should be clearly stated.

Since the DC Guidelines do not direct administrators to provide information and tools regarding projected retirement income, but rather suggest such communications be considered, administrators will need to evaluate whether providing interactive retirement planning tools for members' use is sufficient in and of itself, and whether presenting members with a range of possible estimate or illustration outcomes using different assumptions may be appropriate to illustrate the variability of projections to members.

Regardless of the projections and tools that the administrator determines will be provided to members, the DC Guidelines make clear that the administrator is expected to inform members that other sources of benefits or retirement income may be necessary to achieve their retirement income goals.

THE "DE-ACCUMULATION" PHASE

The DC Guidelines make specific reference to disclosure requirements during the "de-accumulation" phase. The DC Guidelines put clear expectations on DC plan administrators to provide information as required by pension legislation on plan termination. However, additional information is also expected to be provided to assist members in understanding the characteristics of the regulated retirement products available to members during the pay-out phase, along with any un-locking options which may be available to the member.

It is not clear from the DC Guidelines when a member would normally be considered to be approaching the pay-out phase, and thus when the information ought to be provided to allow for appropriate retirement planning and consideration of the characteristics of the available retirement products. If this type of information is already provided in the member booklet, administrators may wish to consider whether this is sufficient or whether it is advisable to provide supplementary information for members as they approach the earliest retirement date permitted under the DC plan terms.

CAPSA has included a separate "Reference Document" which provides general descriptions and information concerning the various types of retirement products into which members may elect to transfer the value of their pension account upon termination of their plan participation. The Reference Document is intended as a guide to the types of information that administrators are expected to provide to inform members about the characteristics of the vehicles available in the relevant jurisdiction. The availability of retirement products vary across Canadian jurisdictions, and are subject to change. In Ontario and federally, retirement products currently available include locked-in retirement accounts, life income funds and locked-in retirement savings plans.

Many third-party service-providers that provide record-keeping services for DC plans also provide retirement income products. Plan administrators should be sensitive to ensuring that the options made available to departing DC plan members are balanced and adequately describe all of the products available.

ADVERSE AMENDMENTS

CAPSA has also provided a non-exhaustive list of the types of amendments to a DC plan that may be considered adverse on the basis that they negatively affect the prospective benefits, rights or obligations of members or other beneficiaries under a DC plan. These include reductions of employer contributions or increases to member contributions, changes in the allocation of expenses as between the employer and the DC accounts of members, changes to when a member may start to receive retirement income from a DC plan, and more onerous vesting requirements.

The characterization of a plan amendment as adverse triggers written notice requirements under the pension legislation in certain jurisdictions before the plan amendment can be registered.

CONCLUSION

Although pension plan sponsors and administrators are not required by law to follow CAPSA's guidelines, Canadian pension regulators generally expect that plan sponsors and administrators will comply with these guidelines and CAPSA guidelines are widely viewed as best practice benchmarks within the pension industry.

With the release of the new DC Guidelines, employers may consider reviewing their employee communications (e.g., member booklets, annual statements, relevant information and tools on websites hosted by the administrator, sponsor, or third-party service provider, etc.) to ensure that they comply with the new DC Guidelines. Relevant service-provider agreements may also need to be revised to reflect any new responsibilities and expectations put on service-providers as a result of the enhanced member communication expectations set out in the DC Guidelines. Please do not hesitate to contact any member of Hicks Morley's Pension, Benefits and Executive Compensation Group, who would be happy to assist in such a review.
