FTR Now

Update on Ontario ORPP and PRPP Legislation

Date: December 23, 2014

On December 8, 2014 the Ontario government introduced Bill 56, the *Ontario Retirement Pension Plan Act, 2014* proposed legislation intended to institute the new Ontario Retirement Pension Plan ("ORPP"). That same day, the government also introduced Bill 57, the *Pooled Registered Pension Plans Act, 2014*, legislation that will, if passed, provide the legal framework for the establishment, administration and operation of pooled registered pension plans ("PRPPs") in Ontario. ,

More recently, on December 17, 2014, the government released a consultation paper entitled "Ontario Retirement Pension Plan: Key Design Questions" ("ORPP Design Consultation Paper"), and is soliciting public comments and feedback on some of the outstanding design questions related to the implementation of the ORPP. In particular, the ORPP Design Consultation Paper discusses the types of arrangements that might qualify as comparable workplace pension plans, and which might therefore enable employers to obtain exemptions from mandatory participation in the ORPP.

In this *FTR Now* we review key aspects of Bill 56, Bill 57 and the ORPP Design Consultation Paper, and discuss how these developments could impact employers and plan administrators.

ONTARIO RETIREMENT PENSION PLAN

The ORPP was announced in the 2014 Budget as an Ontario initiative to help address the government's concerns around retirement income adequacy for middle income earners – the demographic that the government considers most at risk for under-saving.

BILL 56

Bill 56 is the first piece of legislation to be introduced with respect to the ORPP, and it proposes an operational framework and timeline for implementing this new mandatory pension plan. The framework includes the establishment of an ORPP administrative entity, which would have responsibility for ORPP enrolment, collection of contributions, investment of assets, administration of benefits, and communications with employers, members and beneficiaries.

In terms of timing, Bill 56 would, if passed, obligate the government to establish the ORPP by no later than January 1, 2017, subject to additional legislation that provides for the operation, administration and investment management of the ORPP, and that sets out the terms respecting the ORPP's design.

The design of the ORPP is to incorporate certain "basic requirements" that have been prescribed within Bill 56, and which largely mirror prior government announcements. Specifically, Bill 56 provides that the ORPP must:

- be mandatory for eligible employees and eligible employers in Ontario;
- have a maximum combined contribution rate of 3.8%, shared equally by employers and employees;
- apply to those employees who work in eligible employment in Ontario between 18 and 70 years of age who do not participate in a "comparable workplace pension plan" and whose annual salary and wages are above a yet-to-be-determined earnings threshold; [1]
- have a maximum earnings threshold for 2017 of $90,000, as adjusted to reflect increases in the Year's Maximum Pensionable Earnings under the federal *Canada Pension Plan* ("CPP") between 2014 and 2017;
- pay indexed benefits, including survivor benefits, commencing at age 65, subject to the ability to elect to start benefits

as early as age 60 and as late as age 70; and
- provide for transition rules concerning the phasing in of contribution rates.

However, Bill 56 leaves some key design questions unanswered. For example, Bill 56 – as presently drafted – does not define what is meant by a "comparable workplace pension plan." Some other design questions unanswered by Bill 56 include the minimum earnings threshold, and the ORPP benefit formula (although earlier government announcements indicated that the ORPP would target a replacement rate of 15% of the eligible employee's earnings, to the maximum earnings threshold).

ORPP DESIGN CONSULTATION PAPER

The ORPP Design Consultation Paper released on December 17, 2014 solicits input on some of the central ORPP design questions. In particular, the ORPP Design Consultation Paper seeks public input on the following two key aspects of the ORPP:

- the definition of a "comparable workplace pension plan" for the purposes of clarifying exemptions to mandatory participation in the ORPP; and
- the establishment of a minimum earnings threshold, below which low-income workers would be exempt from making contributions to the ORPP.

The ORPP Design Consultation Paper also seeks input on whether support should be provided to self-employed individuals who do not earn either salary or wages and will, as a result, likely be unable to participate in the ORPP.

COMPARABLE WORKPLACE PENSION PLAN

The definition of "comparable workplace pension plan" is presently the most significant outstanding ORPP design issue for employers, because an employer that sponsors a comparable workplace pension plan is to be provided an exemption from mandatory ORPP participation. The exemption would allow an electing employer to avoid associated ORPP payroll costs of up to 1.9%.

A discussion of the comparable workplace pension plan issue is initiated within the ORPP Design Consultation Paper by first identifying that an expanded CPP is the Ontario government's preferred approach to the retirement income adequacy issue. The paper goes on to indicate that the ORPP is being designed with similar characteristics, on the basis that it might one day be integrated with the CPP.

The ORPP Design Consultation Paper also indicates that defined benefit ("DB") and target benefit multi-employer pension plans possess some of the same key characteristics as the CPP; namely, they provide a certain level of predictability in terms of future retirement income, they can be indexed to inflation, they pool investment risk, they involve mandatory employer contributions, and retirement funds are locked-in (under pension standards legislation). On the other hand, defined contribution ("DC") pension plans and other capital accumulation plans (i.e. PRPPs, group registered retirement savings plans, deferred profit sharing plans) and/or retirement programs that involve various combinations of two or more of these other arrangements do not necessarily possess all of these CPP features, and it appears that these capital accumulation plan designs are at risk of falling short of the "comparable workplace pension plan" exclusion.

The ORPP Design Consultation Paper cites the following benefits to limiting the "comparable" classification to DB and target benefit multi-employer pension plans:

- it would expand the number of employers offering the ORPP to employees, providing greater opportunities for individuals to participate;
- it would allow for greater portability amongst employers;
- it would increase and potentially cause a more stable membership, lowering per-member administration and

compliance costs; and
- it would allow for investment and longevity risks to be spread across a greater number of individuals, which would contribute to a more stable and sustainable plan.

However, query whether the definition of a comparable workplace pension plan should exclude all capital accumulation plan designs, given that these plans can be and are sometimes structured in a way that can provide greater retirement benefits and, potentially, income security than other, less-generous DB or target benefit multi-employer pension plans.

Significantly, although the Ontario government has stated a preference for limiting the comparable workplace pension plan exclusion to DB and target benefit multi-employer pension plans, the ORPP Design Consultation Paper indicates that the government is committed to consulting with employers and other stakeholders on this issue. Questions that the ORPP Design Consultation Paper specifically asks respecting the definition of a "comparable" workplace pension plan include the following:

- whether "comparable" should be determined with reference to key features of the CPP and ORPP, including protection against longevity risk and investment risk;
- whether there are circumstances under which DC plans should be considered comparable (i.e. based on minimum employer/employee contribution rates, or if a requirement were imposed to convert a portion of savings into an annuity upon retirement); and
- how other non-comparable plans would work alongside the ORPP, and how much time would employers need to take stock of their current approaches and make decisions about the right compensation mix going forward.

Given the Ontario government's stated preference for limiting the definition of "comparable" workplace pension plan to DB and target benefit multi-employer pension plans, it is important that employers, and particularly sponsors of DC pension and other capital accumulation plan designs, consider the potential impact of having to participate in and make contributions to the ORPP, and that they take this opportunity to express concerns on the comparable workplace pension plan issue.

MINIMUM EARNINGS THRESHOLD

The ORPP Design Consultation Paper seeks public input on whether, like the CPP, there should be a minimum threshold of earnings under which individuals who have low earnings (and their employers) will not be required to contribute to the ORPP.

Under the CPP, employees and their employers are not required to contribute to CPP on their first $3,500 in annual earnings but still accumulate CPP benefits on their earnings below $3,500. The government's preferred approach is to mirror the CPP's $3,500 threshold in the ORPP, both as a method of ensuring administrative simplicity between the ORPP and CPP, as well as to more closely align with the government's poverty reduction strategy. However, the ORPP Design Consultation Paper seeks input on this threshold, and seeks suggestions for assisting persistently low income workers in their ability to contribute and accumulate benefits. Finally, the ORPP Design Consultation Paper seeks input on whether income-tested benefits should be amended so that low-income seniors do not have those benefits reduced as a result of the ORPP.

SUBMISSIONS DUE BY FEBRUARY 13, 2015

The government has announced that a series of consultations will be hosted in January 2015 with respect to these ORPP design issues. Submissions respecting the ORPP Design Consultation Paper or the ORPP initiative more generally are required to be provided to the Ministry of Finance by **February 13, 2015**. Please contact any member of Hicks Morley's Pension, Benefits and Executive Compensation Team if you wish to make submissions.

POOLED REGISTERED PENSION PLAN LEGISLATION

PRPPs are a relatively new type of savings plan, operating much like a DC pension plan that holds assets pooled together

from multiple participating employers. PRPPs are administered by eligible licensed financial institutions, such as insurance companies and banks.

Bill 57 would, if passed, permit the establishment of and provide for the administration of PRPPs in Ontario by largely adopting the federal pooled registered pension plan legislation that came into force in 2012, and then adapting that legislation to Ontario. Ontario adaptations outlined in Bill 57 include the impact of various family law matters to the PRPP, such as the treatment of spouses and the options on marriage breakdown, in a manner that is similar to the treatment of spouses and former spouses under the *Pension Benefits Act* ("PBA"). Further, and similar to the PBA, Bill 57 provides for funds in a PRPP account to be exempt from execution by creditors.

Bill 57 would also extend regulatory authority over PRPPs to the Ontario Superintendent of Financial Services ("Superintendent"), and sets out the process for a PRPP administrator to object or appeal decisions of the Superintendent. Finally, Bill 57 would amend other legislation, including the PBA, to:

- add PRPPs to the definition of a "pension plan"; and
- add PRPPs to the list of vehicles to which a plan can permit a former member or eligible spouse to transfer pension plan assets.

Registered pension plan administrators will need to consider whether their plan terms permit a transfer to a PRPP and/or consider amending their plans to permit this option. Registered pension plan administrators may also have to adjust their communications accordingly to reflect PRPPs as a possible transfer option.

Similar legislation has already been passed in several other provinces.

CONCLUSION

Bills 56 and 57 are presently at First Reading. We will continue to monitor the progress of the ORPP and PRPP initiative in Ontario. If you have any questions about the proposed ORPP and PRPP legislation or the stakeholder consultation process, please contact a member of Hicks Morley's Pension, Benefits and Executive Compensation Team.

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[1] Eligible employment in Ontario would exclude those working in federally regulated sectors, such as telecommunications and banking and the self-employed.

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