Human Resources Legislative Update

Qualified Foreign Pension Fund Exemptions for Certain U.S. Investment Offerings

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Canadian pension funds are continually seeking investment opportunities abroad with a view to diversifying their portfolio and maximizing risk-adjusted returns. Offerings of investments in U.S. real estate and infrastructure projects will likely increase as a result of recent U.S. legal reforms which aim to attract foreign investment in these areas.

Under the U.S. *Foreign Investment in Real Property Tax Act* (FIRPTA), foreign investors' gains from the disposition of a U.S. real property interest (USRPI) are subject to tax and withholdings. In December, President Obama signed the *Protecting Americans from Tax Hikes Act of 2015* (PATH) into law. The PATH legislation exempts "qualified foreign pension funds" (QFPF) from the FIRPTA tax and related withholding tax on dispositions and distributions after December 19, 2015.

Five requirements must be met to qualify as a QFPF. Most broad-based Canadian registered pension plans should satisfy the five-part test for QFPF status. Canadian pension master trusts should also qualify in most cases. However, plans with few remaining members, and master trusts that include such plans, may not qualify.

Managers offering investments in U.S. real estate and infrastructure will ask the investing pension fund to certify its QFPF status.

Contact your regular Hicks Morley lawyer should you require assistance reviewing a pension fund investment agreement or assessing your plan's QFPF status.