FTR Now

New Multi-Jurisdictional Pension Plan Agreement Now in Effect

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Parties involved in the administration of pension plans have been waiting for Canadian pension regulators to agree to a new set of rules applicable to plans with members in more than one province. Recently, the governments of British Columbia, Nova Scotia, Ontario, Quebec and Saskatchewan signed a new Agreement Respecting Multi-Jurisdictional Pension Plans, which took effect July 1, 2016 (2016 Agreement). The 2016 Agreement applies to multi-jurisdictional pension plans (MJPPs) registered in one of those five provinces, where the MJPP has members subject to the pension legislation of more than one of the those provinces. The 2016 Agreement applies to a greater number of members in a greater number of pension plans than the earlier 2011 agreement.

In this *FTR Now*, we review some of the highlights of the 2016 Agreement and their potential impact for administrators of MJPPs.

Previous Agreements

The 2016 Agreement extends the framework over the regulation and administration of MJPPs established by the Agreement Respecting Multi-Jurisdictional Pension Plans between Ontario and Quebec which came into effect on July 1, 2011 (2011 Agreement). For signatory jurisdictions, the 2016 Agreement also replaces the Memorandum of Reciprocal Agreement signed by all provinces except Prince Edward Island in 1968 (1968 Agreement).

As we previously reported, the 2011 Agreement set out rules governing which province's pension legislation applied to MJPPs and their members in a wide range of circumstances. It went considerably further than the 1968 Agreement by making more member rights, such as annual statements, subject to the province of registration instead of the province of employment ("minor authority"), and adding the final location approach to determining benefits. The final location approach generally requires that benefits accrued by a member who has been employed in more than one signatory jurisdiction be determined as though the member were always subject to the legislation of the final jurisdiction of employment. The 2011 Agreement also provided that member-level issues such as membership rights, marriage breakdown and retirement and termination options were to be determined based on the applicable minor authority's legislation.

Under the 2011 Agreement, plan-level issues like plan amendments, annual statements and funding requirements were to be determined by province of registration, i.e. where the plurality of members are located ("major authority").

2016 Agreement

The 2016 Agreement maintains most of the 2011 Agreement's member-level and plan-level provisions.

However, according to the Canadian Association of Pension Supervisory Authorities (CAPSA), the current form of the 2016 Agreement is intended as an interim measure to replace the 2011 Agreement. At the time of the 2011 Agreement, solvency funding was a requirement for defined benefit (DB) pension plans in all jurisdictions. Amendments to the 2016 Agreement are expected to be released for consultation by 2018 to address changes in funding requirements across jurisdictions, such as jurisdictions where the pension legislation has been amended to eliminate solvency funding for DB plans.

The 2016 Agreement modifies the asset allocation rules found in the 2011 Agreement, which apply at plan level for asset transfers or withdrawals of participating employers in certain circumstances. For example, where a signatory province's

pension legislation is amended after January 1, 2014 to eliminate solvency funding of DB plans, the 2016 Agreement deems benefits accrued under the MJPP before the date of amendment to continue to be funded on a solvency basis, for purposes of certain asset allocation rules. Accordingly, if the legislation of the major authority for a pension plan has been amended to eliminate solvency funding after January 1, 2014, assets must be allocated to member benefits as though solvency funding continues to exist up until the date of amendment of the legislation.

Transitional rules

The 2016 Agreement also prescribes transitional rules regarding the application of pension legislation for new signatories to the 2016 Agreement after July 1, 2016. In such cases, pending matters before pension regulators will generally be continued. The 2016 Agreement also provides that matters pending under the 2011 Agreement prior to July 1, 2016 will continue to be subject to the 2011 Agreement.

Member statements

The Financial Services Commission of Ontario has released a series of Questions and Answers on the 2016 Agreement (Q&A) which specifically addresses member statements. Where Ontario is the major authority for a MJPP, the Q&A indicates that Ontario's member statement requirements will apply for members in other signatory provinces. However, for this transitional year, Ontario's legislation will only govern the content of member statements in other signatory provinces where the fiscal year end of the plan is on or after July 1, 2016. Where a MJPP registered in Ontario has a plan year ending before July 1, 2016, Ontario's legislation for member statements will only apply in respect of Ontario members.

Implications

With the expansion of the MJPP agreement to additional provinces, administrators of plans with members in the signatory provinces will want to consider whether changes to their member disclosure content or other administration practices are necessary or desirable and, where the major authority's legislation has been amended to eliminate solvency funding, the impact on funding requirements.

Conclusion

A commentary guide and administrative procedures are expected to be released by CAPSA to accompany the 2016 Agreement. The 1968 Agreement, for provinces who are not signatories to the 2016 Agreement, and the existing federal-provincial agreements respecting MJPPs will continue to remain in force.

We will keep you apprised of further updates to the 2016 Agreement. In the interim, if you have any questions about the impact of the 2016 Agreement on your MJPP, please contact any member of Hicks Morley's Pension, Benefits and Executive Compensation group.

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