FTR Now

Hello 2017! New for Pension Plan Administration in Ontario

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More change is coming to the administration of pension plans in Ontario. Reforms to pension legislation have been ongoing since 2009 – and with three recent developments under the Ontario *Pension Benefits Act* (PBA) effective in 2017, that trend continues. A new definition of "spouse," new statement disclosure requirements and an enhanced framework for Pension Advisory Committees will impact plan administration across the province. Find out what you should be doing to ensure your plan's compliance in this *FTR Now.*

New Definition of "Spouse" for Ontario Members

As previously reported, effective January 1, 2017, Ontario's Bill 28, *All Families Are Equal Act (Parentage and Related Registrations Statute Law Amendment), 2016*, amends the *Children's Law Reform Act* (CLRA) to modernize and establish new rules of parentage in Ontario. A corresponding amendment to the PBA, also effective January 1, 2017, has modified the definition of "spouse" as follows:

"spouse" means, except where otherwise indicated in this Act, either of two persons who,

(a) are married to each other, or

(b) are not married to each other and are living together in a conjugal relationship,

(i) continuously for a period of not less than three years, or

(ii) in a relationship of some permanence, ~~if they are the natural or adoptive parents of a child, both as defined in the *Family Law Act*~~ **if they are the parents of a child as set out in section 4 of the *Children's Law Reform Act***

Significantly, as between the *Family Law Act* and the CLRA, the latter provides a much more detailed framework for establishing who qualifies as a parent of a child. With the above amendment to the PBA's definition of "spouse," there will be implications respecting entitlements to spousal benefits.

In addition, the *Succession Law Reform Act* (SLRA) was amended to provide that, if certain conditions are met:

- a child conceived after the death of one of his or her parents is still a “child” and “issue” for the purposes of the SLRA under the new posthumous conception rules; and,
- a posthumously-conceived child inherits as if he or she had been born during the lifetime of the deceased and had survived him or her, if the new posthumous conception rules are met.

This change could impact entitlements to survivor benefits.

Accordingly, administrators should take care to ensure that pension plan administration practices are adjusted to comply with these new rules. Further, since pension plan texts, booklets, statements and other documents often include definitions for “spouse,” administrators should review and, as required, amend these definitions for compliance with the PBA at the earliest opportunity.

New Annual and Biennial Statement Disclosure Requirements

Commencing in 2016, each Ontario registered pension plan was required to file a statement of investment policies and procedures (SIP&P) with the Financial Services Commission of Ontario (FSCO). Also new for 2016 was a requirement that the SIP&P include a disclosure as to whether environmental, social and governance (ESG) factors are incorporated into the pension plan’s investment policies and procedures and, if so, how.

New for 2017, administrators of Ontario registered pension plans need to ensure that ESG and certain other information is included in annual statements, as well as the biennial statements that are now required for former and retired members.

As previously reported, amendments to the PBA and Regulation 909, which came into effect on July 1, 2016, require certain SIP&P related disclosures be included in annual member statements distributed after that date. Specifically, annual member statements must now include the following:

- A statement that the plan administrator must establish a SIP&P for the plan that contains investment policies and procedures, and that the SIP&P contains information about whether ESG factors are incorporated into the plan’s investment policies and procedures and, if so, how. For greater certainty, the annual statement need not identify whether and/or how ESG factors are incorporated into the investment policies and procedures of the plan – only that the SIP&P contains such information.
- A statement that the plan administrator is required to make available to members for inspection, without charge, copies of any SIP&P established for the plan.
- A statement that the plan administrator is required to, upon receipt of a written request and payment of the applicable fee (up to a prescribed maximum), to provide by mail or electronically copies of any SIP&P established for the plan.
- A statement that the member is entitled to inspect the most recent SIP&P that was filed at

FSCO's office and that the member may make a written request for the Superintendent of Financial Services to provide the most recent SIP&P to the member by mail or electronically upon payment of the applicable fee.

Under the PBA, annual member statements are required to be distributed within six months of a plan's fiscal year-end. For most plans, which have a December 31st year-end, this means that the new disclosure requirements will first apply to those annual member statements required to be distributed by June 30, 2017.

For pension plans registered with FSCO on or before January 1, 2015, this year will also mark the first time that biennial statements are required to be distributed to former and retired members. These biennial statements must be distributed no later than July 1, 2017. The first biennial statements to former members and retired members of pension plans registered with FSCO after January 1, 2015 must be distributed within 18 months after the end of the plan's first fiscal year. Subsequent biennial statements must be distributed every two years.

Biennial statements are required to include much of the same information as is required for annual statements, including SIP&P-related disclosures. For more details concerning the information required to be included in biennial statements for former and retired members see our *FTR Now*, Amendments Filed to Regulation Made Under Ontario Pension Benefits Act.

With the above deadlines fast approaching, plan administrators should be taking steps now to confirm that annual member statements and biennial statements for former members and retired members are being prepared for distribution in full compliance with these new disclosure requirements.

Enhanced Framework for Pension Advisory Committees

The purpose of a Pension Advisory Committee (PAC) is to monitor plan administration, make recommendations to the administrator regarding the pension plan, and promote awareness and understanding of the plan amongst its membership. While the PBA has long contained rules regarding PACs, as previously reported, the PBA was amended to impose new obligations on pension plan administrators to facilitate the establishment and operation of PACs if members wish to establish one. However, those rules were not proclaimed in force pending release of the regulations, which were needed specify important details to support the new rules. Following consultation, the current regulations were filed on October 31, 2016 and came into force on January 1, 2017 (the Regulations).

Establishment of PACs: A PAC is established through a vote of the members and retired members. A vote is triggered when at least 10 members and/or retired members (or a union representing at least 10 members), of a pension plan with at least 50 members and/or retired members, provide notice containing prescribed information to the administrator of their intent to

form a PAC. Within 30 days of receiving the notice, the plan administrator must contact the persons or union who provided the notice and discuss how it will conduct the vote and provide information on the vote. Within 90 days of receiving the notice, the administrator must distribute the ballot for the vote on the establishment of a PAC and provide details of how to participate in the vote, the purpose of a PAC, and any information prepared by the members or union who gave the notice of the intention to form a PAC. Given the strict timelines, administrators need to be prepared to respond quickly if they receive a notice of intent to establish a PAC.

The vote must to be conducted by secret ballot, either in person at a meeting of members and retired members, electronically, by mail, or by casting ballots at a specific location.

A PAC will be established if a majority of the members and retired members who vote are in favour of having a PAC. There is no minimum number of members and retired members who must vote in order for the vote to count, and the outcome of the vote must be communicated to all members, former members and retired members, and to any trade union that had provided a notice of intent establish a PAC. Reasonable costs associated with the voting process are payable out of the pension fund.

Jointly sponsored pension plans and multi-employer pension plans established pursuant to collective agreements are exempt from the PAC rules, as are plans administered by any type of governing body if at least one of the members is selected by plan members or a union acting on their behalf.

Composition of PACs: A PAC must have at least four and not more than 15 representatives. Each class of employees represented in a pension plan is entitled to appoint a representative to the PAC. If there is only one class of employees, that class is entitled to appoint two representatives to the PAC. Retired members are entitled to appoint two representatives. Former members do not have the right to appoint a representative to the PAC, but can be appointed as a representative by a represented class. The Regulations do not outline the process to follow for appointing representatives but FSCO could provide additional guidance in the future.

PACs established before the new PBA requirements came into force on January 1, 2017 are exempt from the new PAC composition requirements for a transition period of six months.

Administrators' Obligations vis-à-vis PACs: Once a PAC is established, administrators have certain obligations relating to the assistance to be provided to the PAC, including:

- Providing "reasonable" administrative assistance to the PAC with respect to the preparation and distribution of an annual report of its activities to all beneficiaries of the plan.
- Meeting with the PAC at least semi-annually to discuss the administration of the plan and matters of interest to its beneficiaries, unless the PAC agrees to a single annual meeting.

- For defined benefit plans, arranging for the plan's actuary to meet with the PAC at least annually.
- Making available, at least annually, an individual who can report on the fund's investments.
- Providing access to plan records to the PAC upon request, and permitting extracts or copies of records to be taken (but excluding information as to the service, salary, pension benefits or other personal information related to any specific person unless the person has provided prior consent).

The reasonable costs associated with the establishment of a PAC and its operations are payable from the pension fund.

The new obligations will apply to existing PACs, as well as new PACs established in accordance with the new voting procedure discussed above.

Start 2017 Off Right

Pension plan administrators should review their plan text(s), policies and other communications with members in light of the new legislative and regulatory requirements discussed in this *FTR Now* and make appropriate amendments or revisions to ensure ongoing compliance with the PBA. We continue to monitor all developments affecting pension plan administration, including any new changes announced in the upcoming federal and Ontario budgets, and will provide further updates as new developments arise.

Should you have any questions or require further information, please contact a member of our Pension, Benefits and Executive Compensation Group.

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