

FTR Now

Ontario's Next Wave of Pension Reform

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New legislation has been tabled that will, if passed, change the retirement framework in Ontario – and the rules around pension plan administration, governance and funding. The proposals outlined in Bill 177, *Stronger, Fairer Ontario Act (Budget Measures), 2017*, include permanent solvency funding measures, discharges for annuity purchases, a new registry for missing beneficiaries, multi-employer pension plans and target benefits changes and a host of other key amendments. Learn more about these important Bill 177 pension proposals and how they could impact your organization in this *FTR Now*.

Background

As noted in our [FTR Now of November 15, 2017](#), the Ontario government released the 2017 Fall Economic Statement Outlook and Fiscal Review (Fiscal Review) and also tabled supporting legislation in the form of Bill 177, *Stronger, Fairer Ontario Act (Budget Measures), 2017* (Bill 177). Amongst other important human resources changes which will be discussed in a separate *FTR Now*, Bill 177 proposes significant changes to pension legislation in Ontario. This *FTR Now* provides an overview of the significant pension-related provisions of Bill 177. Many additional details to support the proposed changes to the *Pension Benefits Act* (PBA) will require amendments to the regulations, which have yet to be released.

Framework for Solvency Funding

As previously discussed in our *FTR Now*, "[Change on the Horizon: Ontario Pension Plan Funding Reform is Coming Soon](#)," the Ontario government intends to substantially change the pension plan funding rules applicable to Ontario pension plans. According to the previous announcements, sponsors of single employer pension plans will no longer be required to make solvency special payments if the pension plan is funded to 85% or more (on a solvency basis). At the same time, going concern funding will be made more stringent by way of a shortening of the amortization period for liquidating going concern unfunded liabilities, from 15 years to 10 years, and introducing a requirement to maintain a cushion (referred to as a Provision for Adverse Deviation (PfAD)) in respect of the normal costs. The size of the PfAD will be defined in the regulations.

In certain circumstances a pension plan, including a jointly sponsored pension plan (JSPP), will be permitted to take a contribution holiday in respect of contributions to the PfAD. With respect to payment of surplus out of an ongoing pension plan, at least twice the normal costs of the pension plan and twice the required PfAD must be retained in the pension plan after the surplus is paid out in order to obtain the consent of the Superintendent of Financial Services (Superintendent).

While Bill 177 contains some of the changes to the PBA necessary to implement the new pension funding regime, the bulk of the changes will be in regulations that have not yet been released. We will provide a further update when the draft regulations are released, which is expected this Fall.

New Requirement for Governance and Funding Policies

When the government announced the proposed pension plan funding reforms in May 2017, the government also indicated that it would introduce a requirement for all Ontario registered pension plans (including single employer and multi-employer pension plans) to implement governance and funding policies. Bill 177 would amend the PBA to enact this requirement by making governance and funding policies documents that must be established to create and support a pension plan. As documents that create and support a pension plan, governance and funding policies will therefore need to be filed with the Superintendent.

For a new plan (i.e. a plan established after Bill 177 comes into force), this means that governance and funding policies will need to be filed for registration together with other documents that create and support that new plan. However, as a transitional measure, Ontario registered pension plans established prior to the date that Bill 177 comes into force will be given a window, to be prescribed by way of regulation, within which such documents must be filed.

The content of these policies, and the frequency with which they are to be reviewed, will also be prescribed by regulation. It is assumed that defined contribution plans will be subject to the requirement to have a governance policy.

If adopted, these changes will therefore require that existing governance and funding policies be reviewed and possibly refreshed, or that new policies be designed/established. While Bill 177 does not set out the frequency for review going forward, it does make clear that processes will need to be implemented to ensure the review and content requirements are being satisfied. Finally, as documents that are filed in support of a pension plan, the policies will become subject to the inspection and disclosure rules of the PBA.

Discharge for Annuity Purchases

Currently, if a pension plan administrator purchases an annuity to provide for a member's pension benefit, the PBA does not discharge the administrator for liability. The pension industry has long sought a discharge of the administrator's liability where the obligation to provide the pension benefits has been transferred to an insurance company. Among the reforms that the government had previously announced was the introduction of a discharge of the administrator's liability when a pension benefit has been bought out through an annuity purchase.

Bill 177 would amend the PBA to discharge the administrator of a single employer pension plan upon completing the purchase of an annuity for a pension, deferred pension or ancillary benefit, in accordance with certain required conditions. The required conditions include the following:

- The annuity must provide the same benefit to the former member, retired member or spouse, as applicable, with payments in the same amount as would have been received from the pension plan if the annuity purchase had not been made;
- The insurance company from which the purchase is made is authorized to sell annuities;
- The contract to purchase the benefit meets prescribed requirements; and
- The purchase meets any other requirements that may be prescribed, including requirements or conditions relating to funding.

The administrator will be required to file a certificate prepared and signed by the plan's actuary certifying that the administrator has complied with these requirements. The PBA will also be amended to provide a mechanism for administrators who have already purchased buy-out annuities to certify that the purchase meets the new requirements (and administrators may adjust the original annuity purchase to satisfy the criteria if necessary), such that they may be eligible for the discharge. If an administrator that has already purchased an annuity seeks the discharge, the administrator must provide notice to the affected retired members or former members.

If a purchase qualifies for the discharge, the affected retired members or former members will no longer be members of the pension plan for any purpose. However, the individuals will retain rights to surplus from the pension plan in the event that there is surplus upon a future wind up of the pension plan.

It is anticipated that this change will increase interest in purchasing buy-out annuities to de-risk defined benefit (DB) pension plans, at least for single employer pension plans. The discharge was not extended to other forms of pension plans that may provide DB pensions, such as JSPPs.

Pension Benefit Guarantee Fund (PBGF) Coverage Enhancements

The PBGF is an Ontario-only insurance fund that provides coverage for DB pensions when an employer becomes insolvent and the pension plan is underfunded without assets available to fund the wind up deficit. Currently, the PBGF provides coverage for the first \$1,000 per month.

Bill 177 will amend the PBA to increase the PBGF coverage limit to \$1,500 per month for future plan wind ups. The PBA will also be amended to remove the current eligibility requirements for PBGF coverage that are based on age and years of employment or membership, such that all members of a pension plan that is wound up after the amendments come into effect will be potentially eligible for PBGF coverage.

MEPPs and Target Benefit Plans

Bill 177 also makes certain changes to the PBA that will directly impact multi-employer pension plans (MEPPs), including those that will be converted into target benefit plans once the target benefit plan provisions come into force. In particular, the pending target benefit plan provisions are repealed and replaced with new provisions and new criteria that must be satisfied in order for a pension plan to qualify as a target benefit plan. Those additional criteria include the following:

- The pension plan must be a MEPP;
- The documents that create and support the plan must identify the benefit as a target benefit; and
- If the pension plan was not initially registered as a target benefit plan, the benefit, if accrued, was converted to a target benefit in accordance with the PBA.

These criteria are on top of the requirements that employer contributions to the MEPP be fixed under a collective agreement, and that the plan permit the reduction of benefits. A pension plan will not be able to provide both DB pensions and target benefit pensions, except where permitted by the regulations.

Section 26 of the PBA will be amended to clarify that notices regarding reductions to target benefits must be provided to members, even if agreed to by the relevant trade union. The regulations may contain specific requirements for notices provided by target benefit plans.

A new provision will be added to the PBA to provide for the conversion of an existing MEPP into a target benefit plan where the conversion is proposed by way of an amendment to the pension plan. A prescribed notice of the conversion must be provided to members, former members, retired members and other persons entitled to benefits under the MEPP, as well as to the participating employers and the trade union that represents the members. The Superintendent must also receive a notice. The administrator of the MEPP will be required to consult in good faith with the trade unions that represent members of the MEPP. If the legislative criteria (including additional conditions to be prescribed by regulation) are satisfied, the Superintendent will be required to consent to the conversion.

Upon conversion, if the pension plan has a solvency deficiency, the special payments to fund the deficiency may be cancelled if prescribed conditions are satisfied.

Although not contained in Bill 177, based on the government's announcement regarding the funding rules for MEPPs, discussed in more detail in our [prior FTR Now referred to above](#), it is expected that a MEPP that qualifies as a target benefit plan will be exempt from solvency funding. Once again, further details regarding the new funding regime as applicable to MEPPs and target benefit plans will be set out in yet to be released regulations.

Bill 177 also amends the PBA wind up provisions in respect of MEPPs. In particular, section 75 of the PBA will be amended to provide that MEPPs established pursuant to a collective agreement or a trust agreement are not required to fund amounts on wind up other than contributions due or accrued but not yet made to the pension plan.

Registry for Missing Beneficiaries

Bill 177 introduces a new registry for missing beneficiaries. The purpose of the registry will be to help beneficiaries identify entitlements to benefits or payments they are owed under pension plans. The amendments do not create a mechanism to permit administrators to transfer the liabilities of missing members to a fund and provide relief from the ongoing obligation to maintain the benefit for that member under the pension plan.

Once in force, the new electronic registry will be maintained by the Superintendent and administrators of Ontario registered pension plans will be required to give notice to the Superintendent if a beneficiary cannot be located. An administrator's notice must be in the form and include information (including personal information of the beneficiary) as may be specified by the Superintendent.

The Superintendent will be responsible for recording information regarding the beneficiary in the registry. If an administrator locates a missing beneficiary, the administrator will be required to notify the Superintendent so that the registry can be updated.

A person will be able to request, in the prescribed form, that the Superintendent determine if the person (or an individual they represent) is a person listed on the registry with possible benefit entitlements under a pension plan.

The new provisions regarding the registry are supported by recent policies issued by the Superintendent with respect to searching for missing beneficiaries (policy A300-900 – Searching for Plan Beneficiaries, and A300-901 – Waiver of Biennial Statements for Missing Former and Retired Members). The policies, reviewed in greater detail in our [FTR Now dated November 16, 2017](#), set out steps that a pension plan administrator can take to search for missing beneficiaries and establish that prudent steps have been taken, such that the beneficiary can be declared missing. Where it is a retired member or former member who is missing, the plan administrator can now apply to the Superintendent for a waiver of the obligation to provide biennial statements to such members if the administrator establishes that prudent steps have been taken and exhausted.

Updating the New Face of Pension Regulation in Ontario

Bill 177 amends the *Financial Services Regulatory Authority of Ontario Act, 2016* (the FSRA Act) to, among other things, provide the Financial Services Regulatory Authority (FSRA) with rule-making authority over certain matters.

For pension purposes, FSRA will be permitted to make rules respecting fees, levies, sector assessments and other charges that FSRA may impose, including for filing, for applications for registrations, in respect of compliance reviews and audits, and in connection with other work FSRA undertakes. FSRA will not have rule-making authority over administrative penalties. Proposed rules are subject to approval by the Minister of Finance, and must adhere to certain requirements regarding notice to and comments from the public.

FSRA may collect and enforce the payment of fees, levies, sector assessments and other charges as may be established by a rule of FSRA. While FSRA's revenues are to be used for carrying out its work, and do not form part of the overall government's Consolidated Revenue Fund (the CRF), FSRA is required to pay into the CRF amounts received pursuant to an order or a settlement and from administrative penalties, subject to exceptions provided by regulation.

Bill 177 also enacts the *Financial Services Tribunal Act, 2017* (the FST Act) which continues the Financial Services Tribunal (FST). In certain cases, the FST will be permitted to refuse to hear a matter and terminate a proceeding, where the FST is satisfied the proceeding is frivolous and vexatious. In such cases, the FST Act specifically provides the FST with the ability to make a costs order.

Other Pension-Related Changes of Note

In addition to the above, other changes would:

- Establish that a collective agreement is a document that creates and supports a pension plan where the pension plan is established pursuant to the collective agreement, the collective agreement incorporates the pension plan by reference, in whole or in part, or the terms of the pension plan are set out in whole or in part in the collective agreement. This change is intended to clarify the circumstances in which a collective agreement must also be filed with the Superintendent as a document that creates and supports a pension plan.
- Make changes to the rules respecting variable benefits. Variable benefits, once the supporting provisions are in force, will permit a defined contribution plan to pay benefits directly from the plan. Bill 177 amends the variable benefit provisions with respect to the right of the member's spouse or common law partner who has been designated by the member as a "specified beneficiary" of a variable benefit account to receive statements from the pension plan and also to permit transfers and establish the priority of payments from a variable benefit account on the death of the member, including the ability of a specified beneficiary to name a designated beneficiary to receive death benefits in the event that both the member and specified beneficiary die.

Finally, the Fiscal Review indicates that:

- the government is continuing to review rules applicable to defined contribution plans, and in particular new decumulation approaches to help retired members draw down their defined contribution benefits in a more efficient and cost-effective manner over their retirement;
- the OHIP+ program, which will provide prescription drug coverage for Ontario residents under age 25, will be moving forward and will be effective January 1, 2018; and
- the Workplace Safety and Insurance Board (WSIB) and the union that represents the majority of its employees have agreed to a proposed conversion of the WSIB pension plan into a JSPP. If the conversion proceeds, following a regulatory consent process, the government announced its intention to pass regulations exempting the new JSPP from solvency funding like all other major Ontario JSPPs.

Next Steps for Employers and Administrators

Bill 177 contains significant changes to the pension legislation landscape in Ontario, but supporting regulations are needed to provide important details about how the rules will be implemented and operate going forward. We continue to monitor for developments and will provide additional information when the draft regulations are released. In the meantime, employers should begin to prepare for the new funding rules and the new governance and funding policy requirements. If you have any questions regarding the proposed changes to the PBA, please contact one of the members of our [Pension, Benefits and Executive Compensation practice group](#).

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