FTR Now

Ontario's New Variable Benefits Regime for Defined Contribution Plans – Draft Regulations

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With the release of draft regulations, Ontario moves a step closer to allowing variable benefits to be paid directly from defined contribution (DC) pension plans.

Currently, when a member of a DC pension plan or a DC component of a combined plan (hereinafter, a "DC Plan") retires, the member's account balance must be transferred out of the pension plan in order to start receiving retirement income. On April 11, 2019, the Ontario government released draft regulations under the *Pension Benefits Act* (PBA) that would, if adopted, provide a regulatory framework for DC Plans to offer Life Income Fund (LIF)-style variable benefit (VB) accounts to retired members. Comments on these draft VB regulations (VB Regulations) may be submitted to the Ministry of Finance Pension Policy Branch until May 3, 2019. In this *FTR Now*, we review the details of the proposed VB Regulations.

Background

The Ontario government has been taking steps towards creating a VB regime for several years, commencing in 2015 when the PBA was first amended by Bill 91 to introduce VB rules. These VB rules, once proclaimed into force, would make it possible for a DC Plan to provide the option for a retired member to make withdrawals directly from the plan. As we previously reported, changes were made to the unproclaimed VB rules under the PBA in 2017 and 2018. A description of draft regulations was also released for comment in 2018. The proposed VB Regulations set out in detail how the VB regime will function.

The Proposed VB Regime

Establishing a VB Account

Under the proposed VB regime, VB accounts will be completely voluntary for both DC Plans and retired members. If the option were to be made available under a DC Plan and a retired member of that DC Plan elects to establish a VB account, the entire amount of the retired member's DC Plan account balance would need to be transferred to the VB account, provided that the retired member would have a one-time opportunity to withdraw or transfer to a registered retirement savings arrangement up to 50% of the value of their transferred account balance (on an unlocked basis) within 60 days of establishing a VB account.

The DC Plan administrator would be required to provide the retired member with an initial statement setting out certain information, including the amount transferred, the applicable fees and a description of the benefits that will be provided upon death.

Receiving Retirement Income from a VB Account

The retired member would be responsible for determining the amount of income to be paid from their VB account, along with the frequency and method of payment, subject to minimum withdrawal amounts prescribed under the *Income Tax Act* (ITA) and maximums prescribed by Schedule 1.1 of the General Regulation under the PBA. The default amount, to be paid in the absence of a qualifying election, would be the minimum prescribed under the ITA.

Retired members receiving retirement income from a VB account would be entitled to receive annual statements, to be provided within 60 days after the end of each calendar year. The draft VB Regulations set out the prescribed content for these statements, which includes the VB account balance at the beginning and end of the year, accumulated investment earnings and applicable fees.

A retired member would have the option to change the amount, frequency and method of income payable, up to two times per year (following receipt of the first annual statement as a VB account holder).

The unproclaimed VB provisions of the PBA and draft VB Regulations also provide that retired members would be permitted to transfer amounts into and out of their VB account. For example, transfers could be made to a VB account from another DC Plan, a LIF, locked-in retirement account (LIRA) or locked-in retirement fund. Transfers out of the VB account could be made to another DC Plan, a LIF, a LIRA, or used to purchase a life annuity.

Death Benefits

The proposed VB framework provides that a retired member would have the option to designate their spouse as a “specified beneficiary,” and in the event that the specified beneficiary survives the retired member, the specified beneficiary would have the option to continue receiving retirement income from the member’s VB account. A spouse designated as a specified beneficiary would also be required to elect to continue receiving VB payments from the plan. The default amount payable to a specified beneficiary would be the amount that was previously being paid from the VB account to the retired member. Similar requirements with respect to initial and annual statements would apply to specified beneficiaries.

In the absence of a specified beneficiary, the balance of the VB account would be payable as a lump sum, provided that a surviving spouse (who had not been designated as a specified beneficiary) would have the option to direct the DC Plan administrator to transfer a death benefit to a registered retirement savings arrangement. The proposed VB Regulations would require that a statement be provided to the person entitled to the death benefit.

Family Law Matters

Along with the VB Regulations, the government posted a draft regulation amending the Family Law Matters Regulation under the PBA. For the purposes of the division of pension assets on marriage breakdown, a new Part III would be added to the Family Law Matters Regulation with respect to VB accounts. The unproclaimed VB provisions of the PBA also set out the requirements for division of a VB account in the event that property (including pension assets) are being divided between a retired member and their former spouse. The key difference is that unlike retirement income payable from a defined benefit pension plan, there is no option to divide the ongoing payments from a VB account amongst the retired member and their former spouse. Former spouses would only be able to transfer a lump sum for family law purposes from the member's VB account to another pension plan (with the approval of the administrator of that plan), to a LIF or to a LIRA.

Considerations for DC Plan Sponsors and Administrators

VB accounts may be of particular interest to DC Plan sponsors and administrators who wish to provide further support to retired DC Plan members (i.e. based on a view that VB accounts could help smooth the transition to retirement and/or promote better access to a well-managed decumulation option). However, the potential advantages of VB accounts should also be weighed against the additional administrative burden, associated costs and potential risks.

We will monitor and provide updates on future developments related to the proposed VB framework.

Should you have any questions or require further information, please contact Jordan N. Fremont at 416-864-7228, Alyson Frankie at 416-864-7019 or any other member of the Pension, Benefits & Executive Compensation practice group.