FTR Now

Changes to Ontario's Annuity Purchase and Discharge Rules – Bill 57 Amendments and Draft Supporting Regulations

Date: April 29, 2019

New draft regulations support and provide additional details respecting the rules governing annuity purchases and related statutory discharges under the *Pension Benefits Act* (PBA).

The current rules for annuity purchases and related statutory discharges under the PBA and the supporting regulation came into force on July 1, 2018. As previously reported, changes to these rules were included in the *Restoring Trust, Transparency and Accountability Act, 2018* (Bill 57), which although passed, have not yet been proclaimed into force.

This *FTR Now* reviews the changes to the annuity purchase and related statutory discharge rules included in Bill 57 and the draft supporting regulations (Proposed Regulations) that were recently posted. Comments on the Proposed Regulations may be submitted to the Ministry of Finance Pension Policy Branch until May 3, 2019.

Statutory Discharge for Annuities Purchased for Spouses

Currently, a statutory discharge for an annuity purchase can only be applied to former and retired plan members. A statutory discharge is considered desirable since, once obtained, the former or retired member is no longer a member of the pension plan for the purposes or the PBA (subject to any applicable surplus entitlement). Bill 57 amended the PBA to extend the availability of the statutory discharge to annuities purchased respecting spousal entitlements. Specifically, the extension applies to the following spousal entitlements:

- Surviving spouses receiving a joint and survivor pension;
- Surviving spouses receiving a pension in conjunction with a pre-retirement death benefit; and
- Spouses receiving a proportion of a retired member's pension that was divided for family law purposes.

The Bill 57 amendments also extended the annuity purchase and statutory discharge notice requirements to surviving spouses. The Proposed Regulations prescribe the content for these notices. Other changes included in the Proposed Regulations include prescribed content for a discharge application and the administrator's recordkeeping responsibilities with respect to surviving spouses.

Compliance with Funding Requirements

Bill 57 also amended the annuity purchase and statutory discharge rules to specifically require that a discharge is only available if certain prescribed requirements, including funding conditions or limitations, are satisfied. The Proposed Regulations include a requirement that the solvency ratio must be at least equal to or greater than 85% in order to meet the requirements for a discharge, and generally align the solvency funding requirements with those in the General Regulation under the PBA.

Consequences for Non-Compliant Annuity Contracts

The PBA amendments under Bill 57 further provided that the statutory discharge will be deemed not to apply in respect of an annuity purchase if it is later determined that the requirements for the discharge had not been met. However, if this occurs, an

administrator can take steps to modify the annuity in order to meet the requirements.

As amended by Bill 57, the PBA further provides that the Superintendent of Financial Services may issue an order to require an insurance company to repay the payment for an annuity purchase if it did not satisfy the criteria in the PBA and Annuity Regulations.

We will monitor and provide updates on future developments related to the proposed changes to the annuity rules.

Should you have any questions or require further information, please contact any other member of the Pension, Benefits & Executive Compensation practice group.