Prince Edward Island CANADA

Environment, Labour and Justice

Overview

Prince Edward Island
Bill 41
Pension Benefits Act

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Consultations

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On 17 May 2012, Prince Edward Island Bill 41, the *Pension Benefits Act*, was introduced in the legislature. The legislation will take effect when proclaimed in force, which is expected to happen only after development of regulations following further consultation.

Once in force, the *Pension Benefits Act* will incorporate many aspects of modern pension standards and regulatory requirements. Bill 41 will be of interest to anyone responsible for a pension plan in Prince Edward Island or having Prince Edward Island members. It will also be of interest to Prince Edward Island employers who may be considering implementing a pension plan design.

Background

A *Pension Benefits Act* was enacted in Prince Edward Island in 1990, but it has never been proclaimed. A new bill was introduced for first reading in December, 2010. This legislation was modeled on the then existing Nova Scotia law and was intended to harmonize with pension legislation of other Canadian jurisdictions.

In December, 2011, a new Nova Scotia Pension Benefits Act received Royal Assent. The new Nova Scotia legislation incorporates many pension standards and regulatory reforms being considered in other Canadian jurisdictions. Prince Edward Island Bill 41 is modeled after the new Nova Scotia legislation.

Major Pension Reform Aspects

The following are the major pension reforms incorporated in Bill 41:

Recognition of New Plan Types

Jointly-sponsored pension plans (JSPPs) and target benefit pension plans (TBPPs) are allowed.

A JSPP is a contributory defined benefit plan in which members must contribute towards any going concern unfunded liability or solvency deficiency. JSPPs are not subject to the terminal funding requirements of the Act on wind-up and can reduce benefits.

A TBPP is a plan that provides benefits that are not defined contribution benefits, but which limit employer contributions to an amount fixed under one or more collective agreements. TBPP administrators can reduce benefits accrued under the plan if this is required because of the plan’s financial position.

Special disclosure requirements and additional prescribed criteria would apply to both JSPPs and TBPPs.

Immediate Vesting for all Benefits

All accrued pension benefits will vest immediately.

Pre-retirement Death Benefit
The minimum benefit payable on death before retirement will be 100% of the commuted value of the individual's accrued benefits. Spouses will have priority to pre-retirement death benefits, with limited spousal waiver of such entitlements.

Small Benefit Limit
A pension plan will be able to commute (that is, pay as a lump sum) benefits payable to a former member or retiree where the annual pension payable is not more than 4% of the year's maximum pensionable earnings under the Canada Pension Plan (YMPE) or where the commuted value of benefits is less than 20% of the YMPE in the year of termination of employment (i.e. up from 10% as was reflected in the 2010 bill).

Contribution Holidays
Contribution holidays (for both employers and members) may be taken if a plan has a surplus, the plan terms allow for a contribution holiday, and other prescribed requirements are satisfied.

Letters of Credit
Prescribed employers may be entitled to use letters of credit in lieu of contributions to fund solvency deficiencies, subject to a variety of requirements. These include an overall limit of the face value of the letter of credit to 15% of solvency liabilities and a prohibition against paying certain fees associated with the letter of credit from the pension fund.

Refund of Overpayments
Certain overpayments to employers may be refunded if the Superintendent of Pensions consents.

Surplus
The surplus withdrawal provisions have been revised, though the basic rules which allow an employer access to surplus based on contractual entitlement or written agreement with a specified proportion of plan beneficiaries are maintained. An ongoing plan must retain surplus equal to the greater of twice the normal cost of the plan plus 5% of plan liabilities, and 25% of plan liabilities, all calculated as prescribed.

Asset Transfers
A variety of provisions regarding asset transfers between pension plans are revised, though many of the details will be set out in regulations. Of note, where a successor employer with a pension plan for transferred employees seeks to transfer assets from the original pension plan, the transfer must include a portion of any surplus.

Distressed Plans
There are provisions relating to compromises, arrangements or agreements made under the *Companies' Creditors Arrangement Act* and the *Bankruptcy and Insolvency Act.*

Valuation Reports
The Superintendent of Pensions has the authority to require a new valuation report, including the authority to specify methods and assumptions for its preparation. This authority will apply where the Superintendent is of the opinion that a report does not meet the requirements under the Act, the methods and assumptions used in the report are not consistent with accepted actuarial practice, or the assumptions or methods used are inappropriate in the plan's circumstances (even if they are consistent with accepted actuarial practice).

Other Changes
Bill 41 includes a wide variety of other changes, including the following:

- Variation of payment on shortened life expectancy rules;
- Plan amendment notice and restrictions;
- Requirement to provide a contribution summary to a trustee to facilitate monitoring of contribution remittance;
- Phased retirement;
- Spousal waivers;
- Orders and appeals;
- Record retention obligations;
- Retiree rights, including a right to participate in pension advisory committees; and
- Penalties for offences.

Consultation
During 2012, the Department of Environment, Labour and Justice will continue to consult with Islanders regarding Prince Edward Island pension legislation, including Bill 41 and ensuing regulations.

Once Bill 41 is proclaimed in force, plans must be administered in conformity with the legislation. However, plan sponsors will have up to three years to formally amend plan documents to comply with the new provisions.

Bill 41 may require extensive revisions to plan documents and administrative practices. It may also result in changes to fundamental governance structures and plan design for organizations wishing to take advantage of the opportunities presented by the JSPP and TBPP options.

Ensuing regulations of Bill 41 will be released in draft form for comment in advance. Interested parties are invited to consult with the Department of Environment, Labour and Justice.