Goodmans LLP Update

Pensions Law

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Ontario Proposes Exemption to the 30% Rule for Pension Investment in Infrastructure

On November 10, 2014, the Pension Policy Branch of the Ontario Ministry of Finance released for public comment a proposed amendment to the Regulations under the *Pension Benefits Act* (Ontario) (the PBA) that would provide an exemption from the so-called "30% Rule" for pension investment in infrastructure.

The 30% Rule is a quantitative limit on investments by pension plans found in the federal *Pension Benefits Standards Regulations, 1985* that is incorporated by reference into the PBA. The 30% Rule provides that the administrator of a plan shall not, directly or indirectly, invest the moneys of the plan in the securities of a corporation to which are attached more than 30% of the votes that may be cast to elect the corporation's directors. There currently are exemptions to the 30% Rule for investments in "real estate corporations", "resource companies" and "investment corporations", provided certain requirements are met.

Many stakeholders have advocated the elimination of the 30% Rule over the years. In October 2008, the Ontario Expert Commission on Pensions headed by Harry Arthurs released a report entitled *A Fine Balance* that recommended, among other things, that:

- the Ontario government should consider establishing its own investment rules, and
- any plan with some recognized form of joint governance and with the requisite capacity to make complex investment decisions be allowed to adopt a resolution claiming an exemption from the 30% Rule.

Despite widespread support for these recommendations, the federal government announced in May 2010 that it had no intention of changing the 30% Rule, stating that it remained appropriate at the time for prudential reasons.

In the *2013 Ontario Economic Outlook and Fiscal Review*, the government of Ontario announced that it would propose regulations to allow pension plans to invest further in local infrastructure by exempting investments in Ontario public infrastructure projects from the 30% Rule. The proposed amendment to Regulation 909 would implement this proposal by extending the existing exemptions to the 30% Rule for Ontario pension plans to include investments in "infrastructure corporations".

For the purposes of the exemption:

- an infrastructure corporation would be required to limit its activities to "acquiring, constructing, holding, developing, maintaining, improving, managing, operating, leasing, or disposing of public infrastructure"
- "public infrastructure" would be defined as "the physical structures and associated facilities by or through which a public service is provided in Ontario", including (but not limited to):
  - public transit
  - road, highways, and bridges
  - health care facilities and hospitals
  - administration of justice, including courthouses and prisons
  - educational facilities, including primary, secondary and post-secondary institutions
  - power generation, transmission and distribution networks
  - water and waste management systems

- o land registry systems
- o medical or research institutes
- o recreational or cultural facilities
- o housing
- o lottery and gaming facilities
- o telecommunications

provided the infrastructure is located *exclusively* in Ontario.

As with the current exemptions for real estate, resource and investment corporations, a pension plan administrator could only benefit from the exemption to the 30% Rule if it filed with the Superintendent a prescribed form of undertaking by the infrastructure corporation.

Stakeholders are invited to comment on all aspects of this proposal, a copy of which is available at the Service Ontario website. Comments are due by **January 9, 2015**.

Please contact any member of our Pensions Group for further information.