

Update

Pension Law

June 26, 2009

Ontario Pension Regulation Changes Regarding Solvency Funding Relief and Unlocking

The Ontario government has introduced changes to Ontario's pension regulations that will be of interest to many plan administrators. These much anticipated changes provide certain solvency funding relief measures for Ontario registered pension plans and increase the permissible unlocking maximum.

The following provides a brief overview of the changes.

Solvency Funding Relief

Pension plans are required to pre-fund their liabilities on both a going concern and solvency basis. Generally any new solvency deficiency disclosed in an actuarial report is required to be funded over no more than five years and any new going concern unfunded liability is required to be funded over no more than fifteen years.

The new temporary solvency funding relief measures are applicable to the first filed actuarial report with a valuation date that is effective on or after September 30, 2008. Plan administrators can elect one or more of the following types of solvency funding relief:

1. The funding period for new solvency special payments can be extended to no more than

ten years (instead of five). Where a plan is not jointly governed, in order to take advantage of this option, the plan administrator must send an information statement and an objection form to all members and former members not represented by a collective bargaining agent, and to any collective bargaining agent. Members and former members who are represented by a collective bargaining agent are entitled to receive the information statement. The information statement is required to contain certain details regarding the plan and its funded status. If no more than one-third of the members or former members (or the collective bargaining agent) object to the extension of the solvency amortization period, it can proceed.

2. Any new solvency or going concern special payments schedule may be deferred for up to one year. This means that if the new actuarial valuation discloses a new going concern or solvency deficit, special payments that are required to be made in respect of that deficit can be deferred for up to a year from the valuation date. There is no member consent requirement to elect this option.
3. Pre-existing solvency special payments can be consolidated into a single new five-year amortization schedule. The consolidation would simplify the solvency payment schedules. There is no member consent requirement to elect this option.

The one-time election under these new provisions must be made in writing, cannot be rescinded and must be filed with the regulator. Irrespective of which option or options are elected, the administrator is required to provide a notice containing certain prescribed information to all members, former members and collective bargaining agents.

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Contribution Holidays

Employers will not be entitled to take contribution holidays for fiscal years ending after June 29, 2010 and before January 1, 2013 unless the administrator files an actuarial cost certificate with the regulator that demonstrates that there are excess assets in the pension plan. The permissible contribution holiday that an employer may take is essentially limited to the amount of any excess assets. This change will help ensure that contribution holidays are only taken to the extent that a pension plan has excess assets.

Actuarial Standards

The new actuarial standards of practice for the determination of commuted values will apply to all actuarial valuations with an effective date after December 11, 2008. This allows the new standards (which came into effective April 1, 2009) to be applied retroactively to valuations after December 11, 2008. These new standards were recently incorporated into the regulations. The application of these new standards may, in some cases, result in decreased pension liabilities from an actuarial funding perspective.

Transfer Ratios

Where an employee's employment is terminated, he or she is generally given the option of transferring the commuted value of his or her benefit to an approved vehicle. The regulations are amended such that if the transfer ratio of a pension plan is less than one and the administrator knows or ought to have known that events have taken place since that transfer ratio was determined that may result in a reduction of 10 percent or more in the transfer ratio, no commuted value transfers from the pension fund are permitted without prior approval of the regulator.

Locking-In Changes

The new regulations increase the maximum that can be unlocked or withdrawn from a pension plan when the plan member transfers his or her pension monies to a Life Income Fund (LIF). The changes affecting locking-in include the following:

- (i) For any new LIF established on or after January 1, 2010, up to 50% of the total value of the transferring assets can be unlocked or withdrawn.
- (ii) If a new LIF was established on or before December 31, 2009, the holder of the LIF will have the opportunity, from January 1, 2010 to December 31, 2010, to unlock or withdraw an additional 25% of the market value of the assets transferred to the new LIF.
- (iii) Holders of old LIFs and Locked-In Retirement Income Funds will have a one-time opportunity, from January 1, 2011 to April 30, 2012, to unlock or withdraw up to 50% of the total value of the assets in those plans at the time.

The new regulations introducing the temporary solvency relief measures are a welcome change in the current economic environment. These new regulations follow other changes introduced by the Ontario government affecting Ontario's pension laws in the past few months. And, hopefully, we will continue to see changes and greater certainty in this important area of the law.

If you have any questions regarding this matter, please speak with any member of our Pensions Group:

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