Goodmans LLP Update

Ontario Simplifies Regulation of Asset Transfers and Individual Pension Plans

Ontario recently amended the Pension Benefits Act (PBA) as part of a program to reduce regulatory burdens and governmental red tape. The amendments simplify the regulatory approval process for transferring assets from one pension plan to another and exempt individual pension plans and designated plans from PBA regulation. The amendments were implemented by Ontario's Bill 213, *An Act to reduce burdens on people and businesses* ("**Bill 213**"), which received Royal Assent and is in force as of December 8, 2020.

Asset Transfers

The PBA requires the CEO of the Financial Services Regulatory Authority (FSRA) to consent to the transfer of any assets between pension plans, including any transfers on account of a sale of a business, corporate reorganization or merger. The asset transfer rules in the PBA establish strict requirements and timelines. The timelines for notices to members, former members and retirees, and any trade unions representing affected members are strict, with no remedy for delays. Bill 213 now enables the CEO of FSRA to waive or vary the asset transfer notice requirements of the asset transfer rules. FSRA also has the authority to make and waive its own rules concerning such notice requirements that relate to the asset transfer proposal and the related consent application to the CEO of FSRA.

This rule-making authority also applies to applications to convert single employer pension plans to jointly sponsored pension plans. The PBA amendments are consistent with the updated process for these types of conversions announced by FSRA on October 22, 2020. FSRA has also proposed new guidance for the general asset transfer process, which will aim to simplify that process.

The PBA amendments and these steps from FSRA show the Ontario government and its pension regulator are attempting to ease the asset transfer process away from the restrictive rules and towards a streamlined, outcome-focused process. Under the new rules, it is anticipated pension plan administrators will be able to receive consent to transfer assets more expeditiously than before and, at the same time, the greater flexibility provided to the regulator should allow for the continued protection of pension plan member entitlements.

Individual Pension Plans and Designated Plans

Bill 213 also amends the PBA to permit individual pension plans (IPPs) and designated plans to be exempt from application of the PBA, its regulations and FSRA's regulatory oversight.

IPPs are registered pension plans providing defined benefits that have three or fewer members with a certain relationship to the employer or are certain "designated plans". Designated plans under the Income Tax Act (ITA) require the participant to have a certain level of pension credits. In practice, the plans are typically used by significant shareholders of closely held corporations.

Before Bill 213, IPPs and designated plans were subject to regulation by the PBA. Now, all IPPs and designated plans established after December 8, 2020 are exempt from PBA application. As well, any IPP or designated plan that was established on or before December 8, 2020, may become exempt from PBA application if the

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employer files an election and if certain other conditions are satisfied, including obtaining the consent of plan members. The plans would remain subject to the ITA.

These amendments to the PBA are significant because exempted IPPs and designated plans will no longer be required to follow the PBA's rules for matters such as registration of the plan, filing actuarial valuations, funding the plan or completing annual filing requirements. This should significantly reduce compliance and administration costs for the employer, while the employee will no longer have the protection of the PBA and the enforcement from FSRA. The lack of protection may be less of a concern from a public policy perspective if the plan members are the persons who own and control the employer or are related to them.

The exemption may also make IPPs and designated plans more popular retirement vehicles for employers. The benefits of such plans, like superior tax treatment and contribution room as compared to RRSPs, may have been reduced by the cost and administrative burden. Without those burdens, employers may be more inclined to establish an IPP or designated plans for eligible employees.

Ontario now joins Alberta, British Columbia, Manitoba and Quebec in exempting such plans from pension legislation.

Summary

The amendments to the PBA contained in Bill 213 reflect a significant reduction in government regulation and red tape with respect to asset transfers, IPPs and designated plans. The reduction of cost and complexity of asset transfers will be welcome to both buyers and sellers in merger and acquisition transactions. With the exemption of IPPs and designated plans, employers are granted more freedom in establishing such plans.

For further information concerning these developments, including advice on asset transfers, individual pension plans and designated plans, please contact any member of our Pensions and Benefits Group.