Alberta Pension Legislation Presents New Obligations And Opportunities

The Alberta government has announced that the new Employment Pension Plans Act (New Act) and its associated regulation will come into force in September. The new regulation was released for the first time in conjunction with that announcement, and contains much of the detail that plan sponsors and administrators will need to comply. Here we will discuss the most significant changes in the regulation, as well as the timeline set out for compliance with the new rules.

PLAN DESIGN AND GOVERNANCE OPTIONS

The New Act no longer sets out who is required to be the **administrator** of a pension plan. Rather, those rules are now housed in the regulation. Notably, all plan types – including single employer plans – are now permitted (though in some cases not necessarily required) to employ joint governance models, whether or not the plan is subject to collective bargaining. Such models may employ a board of trustees or "similar body acceptable to the Superintendent." While other structures may be acceptable, they are not defined in the regulation, leaving the Superintendent with discretion to approve other proposed structures.

The regulation prescribes rules in respect of the newly defined **jointly sponsored plans**, which must contain a benefit formula provision (defined benefit (DB) or target benefit (TB)), must be jointly funded by employers and members, and must be jointly governed. Most of the other permissible structures defined in the New Act do not have similarly prescriptive requirements, potentially allowing the development of **innovative plan models**, such as single-employer target benefit plans or non-collectively bargained multi-employer target benefit plans.

The regulation also sets out rules in respect of **conversions of existing plans** to new benefit types or plan structures. For existing defined benefit plans or specified multi-employer plans, the regulation makes clear that conversions of past service accrued benefits to target benefits are not permitted (subject to the fate of Bill 10, discussed further below).

PLAN GOVERNANCE REQUIREMENTS

The regulation provides further guidance regarding the content requirements for the new **governance policy** (required for all plans) and **funding policy** (required for plans containing a benefit formula provision). The approach taken in the regulation is

similar to that for the existing statement of investment policies and procedures, which is that it sets out a list of topics that must be covered in the policies but does not prescribe how each topic must be addressed. Statements of investment policies and procedures will no longer be required for plans where investments are entirely directed by the members.

With respect to the new requirement for **annual assessment of the administration** of every plan, the regulation does not provide any further guidance on how such assessment is to be carried out.

FUNDING AND INVESTMENT RULES

The regulation contains a number of important provisions relating to the funding of DB and TB provisions.

DB Plan Funding

The funding rules in the regulation introduce restrictions regarding the use of going concern surplus for the purpose of**contribution holidays**. Specifically, no more than 20 per cent of the plan's accessible going concern excess – which is the amount by which the plan's going concern assets exceed 105 per cent of the plan's going concern liabilities, thereby building in a margin which cannot be used for contribution holiday purposes – shall be available for the reduction or elimination of contributions in any fiscal year. Additionally, plans which take contribution holidays must disclose via the annual statement such contribution holidays to members accruing benefits under the defined benefit component of the plan as well as all pensioners.

The regulation also sets out the rules regarding **withdrawals from solvency reserve accounts**. Upon approval by the Superintendent, up to a maximum of 20 per cent of the plan's accessible solvency excess – the amount by which the plan's solvency assets exceed 105 per cent of the plan's solvency liabilities – may be withdrawn in the year in which the application is made, and not more than 20 per cent of the accessible solvency excess may be withdrawn in the two following fiscal years. Such applications are to be made on the basis of a current actuarial valuation report prepared as at a date that is not more than one year before the date of the application. Any withdrawals from a solvency reserve account must be disclosed to active members accruing a benefit under the defined benefit component and pensioners (but not deferred vested members) through the annual statement. Where a plan has been terminated, the entire amount of the solvency reserve account may be withdrawn upon approval of the Superintendent after all benefits have been paid.

The **letter of credit** rules remain intact, although the timelines regarding notification, renewal and expiration of letters of credit have been reduced to 30 days.

TB Plan Funding

The regulation also sets out the rules for the funding of TB plans. Those plans will not be subject to solvency funding, but will be required to fund on a **going concern plus provision for adverse deviation (PfAD) basis**. The PfAD will be composed of two factors, relating to the plan's asset allocation and the degree of variance from the benchmark discount rate, both as set out in the regulation.

The regulation also sets out rules describing the circumstances when TB plans must reduce benefits, when benefits may be temporarily increased for retirees, and when benefit improvements for active members will be restricted, largely determined in

relation to whether the plan is able to maintain accessible going concern excess (the amount by which the plan's assets exceed its going concern liabilities and PfAD, reduced by certain offsets).

Valuation Reports

As a transitional matter, all plans with valuation dates falling before September 1, 2014 will continue to prepare and file valuation reports in accordance with the existing rules, notwithstanding the fact that the valuation report may be filed after September 1, 2014. While not specifically provided in the regulation, we understand that the Superintendent will consider applications from plan administrators with pending valuation reports to delay the effective date of the valuation beyond September 1, 2014, in which case the valuation and associated funding obligations will follow the rules of the New Act and regulation.

Investment Rules

The primary changes in the regulation to **plan investment rules** relate to the deletion of restrictions on borrowing – although administrators will still need to observe the restrictions imposed by the *Income Tax Act* (Canada) – and the establishment of a requirement that the default investment option for defined contribution plans offering members investment choice be either a balanced or target date fund. The investment rules set out in the regulations to the federal *Pension Benefits Standards Act, 1985*, commonly referred to as the federal investment rules, continue to apply to Alberta-registered plans.

PLAN ADMINISTRATION AND DISCLOSURE RULES

The regulation contains numerous new provisions relating to disclosure and plan administration requirements.

Disclosure Rules

The regulation specifies in detail the information to be contained in a **plan summary**, which includes a summary of the rights and obligations of members and participating employers under the plan, information relating to investment options and selection methods (including default investment rules) for members of defined contribution plans, an explanation of how and when member benefits may be reduced in a benefit formula provision (defined or target benefit), and a statement regarding the right of members to examine or obtain additional plan records from the plan administrator.

The documents required to be made available to plan members are also specified in the regulation, and in addition to the plan documents and recent regulatory filings includes the governance and funding policies now required under the New Act.

The regulation provides in significant detail the information to be provided in existing and new **member statements**, including:

- Annual statement to active and retired members
- Transfer statements
- Termination statements
- Information statements on marriage breakdown and after filing matrimonial property orders or agreements
- Retirement statements
- Phased retirement benefit statements
- Lump sum payment statements
- Pre-retirement death statements

- Post-retirement death statements
- Plan termination statements

Several of these statements, such as the retired member statement and information statements on marriage breakdown, are new to the regulation. Plan administrators will need to carefully review the requirements for each type of statement under the regulation and confirm that their template statements are consistent with the detailed regulatory requirements. Common to each statement is a requirement that the statement inform members of their right to examine plan documents and records as well as their obligation to notify the administrator with changes to the member's contact information, provide name and contact information for the plan administrator, and a statement outlining which jurisdiction's legislation applies in determining the member's rights and entitlements.

Plan Administration Rules

Several new categories of **items that must be addressed in the plan text** have been introduced by the regulation, including the effective date of the plan and a statement as to whether the member, administrator or both are responsible for the direction of investments in a defined contribution component. The plan text must also be separate from any collective agreement under which the plan was created.

Where a member elects to **opt out of participation** in a plan providing for **auto-enrolment** (as permitted by the New Act), the regulation requires that the election be in writing, state the employee's name and election not to participate, be signed and dated by the participant, and be received within 60 days of receipt of the plan summary (or such longer period as may be specified in the plan).

The **small benefit unlocking** rules have been simplified to provide that unlocking can occur where the commuted value (or account balance) is less than 20 per cent of the year's maximum pensionable earnings. The four per cent of the year's maximum pensionable earnings standard previously applicable to annual pensions under a defined benefit component has been eliminated.

With respect to **marriage breakdowns** occurring after a pension has commenced, the regulation now permits a plan to provide portability options to the non-member pension partner and to pay the member pension partner's pension in a form other than a life only pension post-actuarial adjustment. Fees that the administrator can charge the divorcing or separating parties for dividing a pension have been doubled.

The threshold for the requirement to file **audited financial statements** has been raised from C$3 million to C$10 million, and audited financial statements will no longer be required of plans containing only defined contribution components, although the Superintendent may request year-end account statements from the plan's fundholder.

The New Act provides for the possibility of transferring **unclaimed benefits** to a public trustee, and the regulation outlines the searches that must be undertaken as well as the information that must be provided to the Superintendent prior to a transfer.

The regulation also introduces a series of **new forms** that plan administrators will be required to use when registering a plan or filing an amendment to a plan text or supporting document, such as a trust agreement, or when a pension partner makes a waiver permitted by the New Act, such as of an entitlement to joint and survivor pension, pre-retirement death benefit, post-retirement death benefit, on the unlocking of pension benefits by the member pension partner due to shortened life

expectancy, non-residency or 50 per cent unlocking after age 50, the establishment of a life income type benefits account or life income fund.

REGULATORY AUTHORITY AND ADMINISTRATIVE PENALTIES

The New Act provides the Superintendent with broad discretion in many areas, including with respect to the imposition of**administrative penalties** for contravention of various provisions of the New Act and regulation. The regulation prescribes that the maximum fines that can be imposed using such powers are up to C$250,000 for a corporation or administrator and up to C$50,000 for an individual other than an administrator.

As a check and balance on the expanded authority of the Superintendent under the New Act, a new **Alberta Employment Pension Tribunal** is to be established to hear appeals from decisions of the Superintendent. While the tribunal is unlikely to be in place by the time the legislation takes effect, the regulation now provides that it is to be staffed by individuals “who have experience and expertise in the pension industry.”

COMPLIANCE TIMELINE

The regulation sets out a number of key dates by which plan sponsors and administrators must comply with various aspects of the new legislation, including:

October 1, 2014	Provide an updated Schedule of Expected Contributions to the plan’s fund holder in the new form
December 31, 2014	Defined contribution plans to have a balanced fund or target date fund as the default investment option Required plan amendments to be submitted for registration
August 31, 2015	Governance policy and (if required) funding policy to be in place
December 31, 2015	Compliance with all new disclosure requirements
One year after second plan year-end after September 1, 2014	Completion of first annual administration assessment (for example, if the plan year-end is December 31, then the assessment must be completed by December 31, 2016)

OUTSTANDING ISSUES: BILL 10

Complicating the proclamation of the new legislation in force was the Alberta government’s shelving of Bill 10, which would have made several amendments to the New Act before it came into force. See our May 2014 *Blakes Bulletin: Alberta Has ‘Hit the Pause Button’ on Latest Pension Reforms* for further information. The Bill provided for the ability to convert accrued defined benefits to target benefits, protection from continuing liability for sponsors and administrators on annuity buyouts, and various housekeeping changes.

Until the legislative committee currently reviewing the bill reports back to the Alberta legislature in the fall, the fate of these changes is unknown. However, one immediate implication of further delay in Bill 10 is that many existing specified multi-employer pension plans considering conversion to a target benefit structure under the New Act will need to continue to fund based on solvency funding rules in respect of service prior to the date of conversion, rather than employing the “going concern plus” rules applicable to target benefit plans under the New Act. One

alternative to avoid this issue is for the Alberta government to extend the solvency funding moratorium applicable to such plans pending resolution of the issues around Bill 10. However, it is not yet known whether the government intends to take such action.