

## **Bill 177: Proposed Amendments to the *Pension Benefits Act*** *December 1, 2017*

On November 14, 2017, Ontario tabled Bill 177, the *Stronger, Fairer Ontario Act (Budget Measures), 2017*. Bill 177 proposes changes to the *Pension Benefits Act* (the “PBA”). The proposed changes, which are in Schedule 33 to the Bill, contain few real surprises as most of these changes have been expected for some time.

Here is a summary of selected amendments that will come into effect if Bill 177 is passed, and our comments.

### **1. Obligation to Adopt Funding and Governance Policies**

Pension plans will be required to adopt both a funding policy and a governance policy. The required content of those policies and whether plans will be required to file them with the regulator will not be known until the regulations are released. This requirement reflects the pension legislation of several other provinces as governance assumes a higher priority for pension regulators.

### **2. Missing Members**

One unexpected amendment is the requirement that the Superintendent establish and maintain an electronic registry of missing plan members and beneficiaries. Administrators of pension plans will have to notify the Superintendent when members and other beneficiaries cannot be found so the Superintendent can enter this information into the registry. A person may make a request to the Superintendent to determine if she, or someone she is acting for, is listed in the registry. If they are listed, the Superintendent must provide the person with contact information for the pension plan holding the benefit. If an administrator finds a missing member, it must notify the Superintendent so the information about the missing member can be removed from the registry.

This new requirement falls short of assisting pension plans in dealing with the benefits of members for whom they no longer have contact information. What is required is the establishment of a fund to which administrators can transfer the benefits of missing members, similar to the one now operating in Quebec. Until such a fund is established,

Ontario registered pension plans which are being terminated, including ones in which the employer's contribution obligations are fixed by collective agreement, will continue to have to purchase annuities for missing members. While such purchases may be beneficial to the insurance industry, they are poor public policy.

### **3. Pension Benefits Guarantee Fund**

Pension plan members must now meet certain age, years of employment and membership requirements before their benefits are protected by the Pension Benefits Guarantee Fund ("PBGF"), which partially protects pensions in event of the insolvency of the employer. Bill 177 removes those requirements for windups which occur once the amendments are in force.

As expected, the amount of pension guaranteed by the PBGF will be raised from \$1,000 to \$1,500 for plan wind-ups which occur after the amendments are in force. This increase in coverage falls well short of the \$3,000 guarantee proposed by unions and retiree groups. The costs of increasing coverage to \$1,500 is estimated to be only 5% of the total savings of employers due to the changes to the solvency funding rules.

### **4. Discharge Of Administrators Who Annuitize**

Bill 177 provides a discharge for an administrator of a single-employer pension plan that chooses to annuitize pension benefits from the plan. The PBA will be amended to provide that if the administrator of a single employer pension plan has complied with certain requirements in purchasing an annuity to replace a pension, deferred pension or ancillary benefit, the administrator is discharged from having to provide that pension or benefit. Despite the discharge, a former member or retired member for whom the pension or benefit is purchased retains the same rights with respect to payment of surplus from the pension plan when it winds up as former members and retired members who are entitled to such payments on the date of the wind up.

Administrators have long sought to be discharged from their obligations to deferred and retired plan members once those members' benefits have been transferred to a third party insurer. Deferred and retired members will retain rights to surplus but otherwise have no further rights under the PBA against the administrator.

## **5. Amendments Relating to Solvency Deficiency**

There are a number of proposed amendments which replace references to “solvency deficiency” with “reduced solvency deficiency”, which will have the meaning set out in the regulations. This change is expected to assist in the reduction of the solvency funding target from 100% of a plan’s solvency liabilities to 85%.

Union and retiree groups opposed reducing the threshold for requiring solvency funding special payments, or alternately, accepted it if the PBGF was enhanced sufficiently to absorb or offset the risk of benefit reductions due to the lower funding target. The PBGF is proposed to be enhanced to protect no more than \$1,500 of benefits that are not funded by the plan’s assets (the protection provides the difference between the funded portion of the pension and \$1,500 of monthly pension), not including indexation and recent benefit improvements.

## **6. Target Benefits**

Through mostly technical amendments, the existing but as yet un-proclaimed statutory terms that describe what target benefits are, and that permit existing multi-employer pension plans to convert their benefits to target benefits as defined by the PBA, were slightly revised. The details are to be provided in the regulations, but the scheme roughly parallels other conversion schemes for broader public sector mergers or conversions to JSPPs; that is, requiring a notice and consent process as well as the Superintendent’s consent.

Of note is that the amendments in Bill 177 provide the Crown with immunity to prevent plan members from successfully suing the government for approving the conversion of their pension plan to a target benefit plan. As of yet, there are no proposed amendments to the PBA which will permit single employer plans to convert to target benefit plans.

## **7. Provision For Adverse Deviations**

Section 1 of the PBA will be amended by adding a definition of “provision for adverse deviations” (PfAD). However the definition itself will be contained in the regulations which have yet to be release.

The PBA now provides that the Superintendent shall not consent to the payment of surplus to an employer out of a continuing pension plan unless certain requirements are

satisfied. Bill 177 adds the requirement that an amount equal to at least twice the amount of the required PfAD must be retained in the plan following the payment of any surplus.

PfAD has been the subject of much commentary, in particular what flexibility there will be in setting it, how much will be required and how soon will plans be required to fund it. In other provinces the standard determinants of PfAD include the plan's allocation to equities and its investment return assumption. However, other factors could be included in the PfAD regulations such as the maturity of the plan and the state of the industry it serves. The details of the PfAD which Ontario will require will not be known until the regulations are released.

## **8. Financial Services Regulatory Authority of Ontario: Rule-Making**

A new regulatory body - the Financial Services Regulatory Authority of Ontario ("FSRA") will replace the Financial Services Commission of Ontario. The proposed amendments give it rule-making authority over certain matters, including pension plans.

The new regulator is established on the model of the Ontario Securities Commission – it will have its own rule-making powers. The model effectively transfers policy and rule-making from the Ministry of Finance to FSRA, which is a change from current pension plan regulation. Under this new model, policy-making will be distanced from public or government accountability. It invites a greater role of regulated entities in the process of policy-making.

Bill 177 provides that FSRA will be empowered to issue rules regarding certain matters listed in the PBA. Its rule-making authority regarding pensions is limited, at least initially, primarily to administrative issues, such as setting the time limits for the taking of certain actions and determining the content of various notices.

## **9. Special Rules, Essar Steel Algoma Inc.**

The Act will be amended by adding a special provision for the Algoma pension plans. New section 102.2 of the PBA, subject to certain conditions, will permit regulations that exempt Essar Steel Algoma Inc. or a successor employer from the "deemed trust" protections over contributions that should have been made to the pension plan.

These changes parallel the changes made for US Steel and its plans. Essar has been in CCAA protection since 2015.