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Highlights

Alberta has overhauled their pension legislation. This Research Advisory provides an overview of the most significant changes.

Hewitt

The Hewitt Research Advisory is a regular Hewitt newsletter designed to provide a detailed overview of specific legislative and regulatory developments in Canada relating to human resources.

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Alberta Amends Pension Legislation

The *Employment Pension Plans Amendment Act, 2005* (the “Act”) and *Employment Pension Plans Amendment Regulation* (the “Regulation”) took effect August 10, 2006. Plan amendments related to the legislative changes must be filed with the next plan amendment, or by June 30, 2007, whichever is earlier.

Against the backdrop of downturns in the investment market and low interest rates creating pension funding shortfalls, the stated purpose of the new legislation is to provide private-sector pension plan members better access to information, ensure more transparency on a plan’s financial status, and provide mechanisms to give the Superintendent of Pensions (the “Superintendent”) more effective ways of ensuring that Alberta pension plans are adequately funded. The proposed change relating to letter of credit funding rules was left out of the final version of the legislation but is expected in a subsequent amendment.

An overview of the most significant changes follows below.

Hewitt Comment: Note that despite the fact that plans do not need to be amended to reflect the new legislative changes until next June, they must be administered on the new basis, other than a few limited exceptions, as of last August.

50% Unlocking Option

The Regulation has been amended to permit unlocking of up to 50% of the value of a pension plan benefit or locked-in account effective November 1, 2006, subject to certain requirements. The new provision applies to a person who is at least age 50 and who is either:

- a) withdrawing funds from a pension plan due to a termination of employment, retirement, death or divorce or,
- b) an owner of a locked-in account in a financial institution: a Locked-In Retirement Account (LIRA), or, subject to some

transitional provisions below, a Life Income Fund (LIF) or Locked-In Retirement Income Fund (LRIF).

If there is a pension partner (married or common-law spouse) when the decision to unlock is made, that pension partner must first sign a waiver giving up their entitlement to a survivor pension from the amount that is being unlocked.

Forced Transfers

Under the amended rules, Defined Contribution (“DC”) pension plans can require that members transfer their entitlement out of the plan if the individual who is terminating their membership joined the plan after August 10, 2006, and no Defined Benefit (“DB”) provisions of the plan apply to the individual.

Note that a forced transfer is not the same as small amounts unlocking. Under the new rules, a plan can force a member to transfer funds out of the plan, but cannot force the member to unlock them or take them in cash. The option to take funds out on a non-locked-in basis is at the discretion of the member, if they are eligible, and the member can choose at that point whether to take them in cash or as a rollover to a Registered Retirement Savings Plan (“RRSP”) or Registered Retirement Income Fund (“RRIF”).

Locking-in Exemption for Non-Residents

Benefits payable to non-residents will no longer be subject to locking-in requirements under the Act in order to comply with the *Income Tax Act*. The only stipulation is that the pension partner, if any, must sign a Form 5 Shortened Life/Non-Residency Waiver Form.

This exemption is also extended to a pension partner of a member or former member on the payment of death benefits if that pension partner is similarly a non-resident. This amendment was technically required, as the *Income Tax Act* does not allow non-residents to establish tax-deferred registered products (such as LIRAs).

Solvency Funding Relief

While the draft proposal permitting the use of letters of credit to fund solvency deficiencies has been deferred to a later date, some relief from solvency funding requirements has been included in the current amendments for certain categories of plans. Publicly funded plans are now exempt from the solvency funding requirements of the Act. Public sector plans which meet the definition may apply for exemption from the solvency funding requirements as long as the participating employers agree to fund any shortfall on plan wind-up if the plan should ever be discontinued. In addition, the administrator of a Specified Multi-employer Pension Plan may apply for consent to suspend solvency deficiency payments for a period not exceeding three years providing they agree to certain conditions.

Reports, Returns and Certificates

Actuarial reports must be filed within 180 days of the fiscal year end of the pension plan, 270 days for multi-employer plans, and, where applicable, the Superintendent can request an independent asset appraisal for the purposes of completion of the valuation report.

Plan sponsors are now be required to file a Form 7 – Schedule of Expected Contributions within 30 days of the start of the fiscal year. The form must be filed with the pension fund holder, who is required to advise the Superintendent if an unexpected deviation occurs.

The amendments require that DB plans with assets in excess of \$3 million and DC plans with assets in excess of \$1 million file audited financial reports on an annual basis. Previously, this requirement applied only to specified multi-employer plans. Pension plans that were not required to file annual audited financial statements before the coming into force of these rule changes will not be required to file statements with respect to fiscal years ending before August 10, 2006. As well, the Superintendent can obtain an independent valuation of the market value of the assets of a pension plan.

Hewitt Comment: *These audited financial statements are due within 180 days after the plan’s fiscal year end. Plan sponsors should discuss this requirement with their auditors to ensure that the audit is scheduled in time to have the statements filed within this period.*

Plan Funding – Monthly Contributions

Under the new rules, employer contributions to a DB pension plan must be remitted on a monthly basis. This includes contributions made for normal cost, as well as unfunded liability and solvency special payments. Formerly, these contributions had to be remitted quarterly.

Hewitt Comment: *The requirement for monthly contributions is effective immediately. Alberta Finance does not expect Form 7- Schedule of Expected Contributions to be filed until 30 days after the end of the fiscal year of the plan following the effective date of the legislation. Form 7 is a “contribution planner” outlining the amount and timing of contributions for the fiscal year. Some fund holders have already been requesting that plan administrators file Form 7, so this may not be new to some plan sponsors.*

Disclosure of Information

There are new expanded communication rules for plan administrators including an obligation to identify the pension fund holder and additional information, depending on how the plan assets are invested. The Regulations have been further revised to require that all statements provide the same standard information about the member. As well, there are new disclosure requirements relating to the 50% unlocking option which takes effect on November 1, 2006.

Hewitt Comment: *Plan sponsors should review their employee booklets, annual pension statements and termination, death and retirement benefit statements to ensure that they meet the new disclosure requirements. Alberta Finance has confirmed that although the new rules took effect in August, they aren’t expecting plan statements to reflect the changes until December 31, 2006.*

Transfer of Assets

Where a transfer of assets from one fund holder or custodian to another is contemplated, that transfer will not be permitted unless a copy of the new funding policy is filed with the Superintendent and the Superintendent has consented to the transfer.

Lump Sum Transfers with a Solvency Deficiency

Plans with a solvency ratio less than 1.0 will no longer be able to pay out 100% of the Commuted Value of the benefit if the deficiency in respect of every person eligible for a transfer is less than 5% of the YMPE and if the transfer deficiency in respect of all members eligible for a transfer is less than 5% of the market value of assets. Full transfers in such situations will only be permitted if the plan sponsor immediately contributes an additional amount of money equal to the transfer deficiency of the terminating member.

Locked-in Vehicles

Effective August 10, 2006 LRIFs may no longer be established, coinciding with the removal of the requirement for LIFs to be converted to an annuity at age 80. Any existing LRIFs must be converted to the new LIF by January 1, 2008.

***Hewitt Comment:** Plan sponsors will need to amend their plan documents to remove the ability to transfer small transfer deficiencies that were under the thresholds described above. It is expected that most sponsors will simply elect to make the additional contributions in order to allow the full lump sum to be transferred. Plan amendments are required to remove all references to LRIFs.*

Adverse Amendments

Under the new rules, pension plan administrators must provide notice to plan members of adverse amendments 45 days prior to the effective date of the amendment. An amendment is considered adverse if it “negatively affects the person’s entitlement or potential entitlement to a benefit or increases the cost to the member of securing a benefit.” The notice must include an explanation of the proposed change.

Where an amendment to the pension plan is made which affects the cost of benefits provided by the plan, creates an unfunded liability, or otherwise affects the solvency / funding of the plan, the administrator must file (along with a certified copy of the amendment 60 days after the amendment was made) either:

- a) an interim cost certificate detailing the financial impact of the amendment or a statement that the amendment does not have a material effect on the funding of the benefits provided by the plan; or
- b) notice that a full valuation report will be completed to determine the financial impact of the amendment.

Where the notice is provided, confirmation that the valuation report will be filed within 180 days after the amendment was made must be provided. Notwithstanding these provisions, the Superintendent can instead require a plan to file, within 60 days, a full valuation report and cost certificate (completed as at the effective date of the amendment).

Pension Payable from a DC Provision

In contrast to the forced transfer provision, the amendments provide that benefits earned under a DC provision may now be paid directly from the plan fund (if the plan permits it). The income payable from the DC portion of a pension plan – defined as a Defined Contribution Retirement Income Account (“DC RIA”) is calculated according to the rules applying to LIFs.

The age at which a member can elect to retire under the plan and commence payments from a DC RIA is stipulated by the terms of the pension plan text, but can be no earlier than age 50.

***Hewitt Comment:** The ability to force transfers out of a DC plan will be welcomed by those plan sponsors seeking to limit their fiduciary exposure. The challenge will be to find an efficient process to force out locked-in lump sums of members who don't return their paperwork. On the other hand, for those DC plan sponsors who are focused on assisting their employees to achieve a reasonable income after retirement, the introduction of RIAs for Alberta members means that they will have another vehicle to assist in the conversion of retirement savings to post-retirement income. However, RIAs will add another dimension of complexity to the fiduciary obligations and financial education requirements for those members electing this option.*

Administration Expenses

Under the new rules, an employer is allowed to be reimbursed if a plan allows for expenses to be paid from the plan fund, where the employer directly pays for expenses related to the operation of the plan. Prior to this amendment, all administrative expenses had to be billed to and paid directly from the plan fund.

Fees

A new fee schedule for registration of new plans and Annual Information Returns (AIRs) has been issued increasing the cost from \$4.50 per member to \$7.00 with a minimum fee of \$200 to a maximum fee of \$20,000, up from \$7,000. A late filing fee penalty for AIRs of an additional 10% of the total fee required for the AIR in question has been introduced.

Classes of Employee

The amendments change the rules regarding acceptable classes of employees to provide more flexibility for the Superintendent in approving identifiable groups of employees. This will permit greater differentiation in the pension benefits employers provide across their work force.

Definition of Continuous Employment

Plan sponsors must amend their plans to expand the temporary cessation of employment from 26 to 52 weeks in order to accommodate changes to the EI benefits for paternity/maternity.

***Hewitt Comment:** The changes to the legislation will require a number of other lesser amendments to pension plan documents that are not summarized here. A helpful checklist summarizing both required and voluntary plan amendments as well as number of new Policy Bulletins are available from the Alberta Finance website. While the Alberta amendments introduce many helpful changes to the legislation which will be welcomed by plan sponsors, the amendments highlight once again the frustrating patchwork of inconsistent regulatory requirements which plan sponsors with which employees in multiple jurisdictions are forced to comply.*

About Hewitt Associates

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