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InfoPensions - Issue 8 – November 2012

InfoPensions is the Office of the Superintendent of Financial Institutions' (OSFI) electronic newsletter on pension issues. *InfoPensions* includes announcements and reminders on issues relevant to federally regulated private pension plans as well as descriptions of how OSFI applies selected provisions of the *Pension Benefits Standards Act, 1985* (PBSA), its regulations, directives and OSFI guidance. Plan administrators should obtain appropriate legal and actuarial advice on how the legislation and guidelines affect their particular pension plan.

InfoPensions and *PBSA Update* (OSFI's predecessor pension newsletter) are available on the Pensions Page of OSFI's website. To automatically receive new issues of this newsletter and other OSFI pension-related documents by e-mail, please subscribe through the Subscription Centre.

The next issue of *InfoPensions* will be posted in May 2013.

Pooled Registered Pension Plans (PRPP)

Federal legislation establishing the regulatory framework for PRPPs was passed by Parliament on June 26, 2012. Though the legislation has received Royal Assent, it is not yet in force, and will not be brought into force until the required regulations have been passed.

The first set of PRPP regulations was finalized and published in the Canada Gazette on October 24, 2012. A second set of PRPP regulations was pre-published in the Canada Gazette on October 27, 2012, with a 15 day comment period. Once the second set of PRPP regulations is finalized, the legislation and the regulations will be brought into force.

Canada

Marriage Breakdown and the Applicability of the Ontario Family Law Act (Ontario FLA)

On June 22, 2011, the Ontario Government proclaimed amendments to the Ontario *Pension Benefits Act* (PBA) and the Ontario FLA relating to the division of pension assets on the breakdown of a spousal relationship. These amendments came into effect on January 1, 2012. OSFI has been asked by a number of stakeholders how these amendments impact federal pension plans.

Subsections 25(2) and (3) of the PBSA specifically provide that, subject to the exceptions specified in subsection 25(2), on a spousal relationship breakdown (i.e. divorce, annulment, separation or breakdown of a common-law partnership) a pension benefit that would otherwise be covered by the PBSA is subject instead to the application of provincial property law with respect to the valuation and distribution of that pension benefit.

So, for a federally regulated pension plan with members who reside in Ontario, the Ontario FLA and the Ontario PBA family law provisions would apply (subject to the exceptions specified in section 25(2) of the PBSA) in determining the valuation of their pension benefits and how the benefits are to be distributed on a spousal relationship breakdown. The PBSA still applies for anything else related to that pension benefit (e.g. minimum standards on vesting rules, transfer options, etc.).

Certain provisions in the Ontario PBA and the Ontario FLA apply to plans otherwise covered by the PBSA and other provisions are specific to Ontario regulated pension plans only. For example:

Valuing the benefit

Under the Ontario pension valuation and division rules, all plan administrators are responsible for calculating the value of a member's pension benefit. Therefore, plan administrators of federally regulated pension plans, that have Ontario residents, are also responsible for calculating this value in accordance with the Ontario PBA.

Fees

The Ontario PBA provisions regarding the fees that a plan administrator can charge do not apply to federally regulated pension plans. Plan administrators of federally regulated pension plans may charge reasonable fees for the valuation and distribution of benefits on the breakdown of a spousal relationship if:

- The terms of the pension plan text permit it; and
- The plan administrator is of the view that it is in the best interest of all plan members.

The method for calculating these fees should be disclosed to members at the time that the request for services is made or before.

Forms

The requirement to use forms that have been approved by the Ontario Superintendent does not apply to federally regulated pension plans. Plan administrators of federally regulated pension plans are expected to administer pension benefits in accordance with the court order or agreement that has been submitted to them (subsection 25(5) of the PBSA).

For more information on Ontario's pension valuation and division rules, please visit the Financial Services Commission of Ontario's website. Plan administrators of federally regulated pension plans should seek legal advice to determine how specific provisions apply.

First Nations Pension Plans - Supreme Court of Canada Decision

InfoPensions 5 & 7, provided information on the potential implications of the Supreme Court of Canada (SCC) decision in *NIL/TU, O Child and Family Services Society v. B.C. Government and Service Employees' Union* for some pension plans that provide services to First Nations. OSFI is proceeding with the identification and transfer of some pension plans that, as a result of this decision, are not subject to federal jurisdiction. Plans that have been transferred to provinces thus far include plans with only one participating employer. To date, OSFI has transferred 27 such plans to British Columbia, 22 to Alberta, 26 to Saskatchewan, 35 to Manitoba, 45 to Ontario, 1 to Québec, 2 to New Brunswick and 2 to Nova Scotia. Plan administrators are encouraged to review the SCC decision and their plan structure to determine whether they remain subject to the PBSA.

The next round of transfers is expected to start in early 2013 and will include plans with more complex structures.

Assessment of Pension Plans (Fees) for 2012-2013

The basic rate is set at $10 beginning on April 1, 2013. This rate applies to pension plans with a plan year-end between October 1, 2012 and September 30, 2013, and for newly established plans filing for registration on or after April 1, 2013.

Each pension plan's annual assessment is calculated by multiplying the plan's assessment base by the basic rate that is in effect for the fiscal year in which the assessment is due to be paid. The plan assessment base is determined by using a formula that is described in the *Assessment of Pension Plans Regulations*.

The basic rate was published in Part I of the Canada Gazette on September 29, 2012. The annual pension assessment is due six months after the plan year-end, at the same time as pension filings.

Actuarial Information Summary - Common Mistakes

OSFI has received a number of questions with respect to the completion of the *Actuarial Information Summary* (AIS). The following information should assist actuaries in the completion of the AIS:

Lines 80 through 100: The solvency position of the plan as of the date of the actuarial report is reported on these lines. The solvency assets (i.e. market value of assets less termination expenses) should be reported on line 80. The solvency deficit and not the solvency deficiency (generally based on the average solvency ratio) should be reported on line 100.

Lines 162 & 163: Only the liabilities for active members should be reported on these lines. These lines should not include the liabilities for deferred members.

Line 163: The liability for active members who are within 10 years of pensionable age and whose entitlement is valued at an interest rate basis stated on line 46 is reported on this line. This instruction should refer to lines 46 **and** 47. This will be corrected in the AIS, concurrent with a future review.

Line 165b: This line should be completed for active members and deferred vested members, even if the information is the same for these two groups.

For plans that have submitted an application seeking the Superintendent's authorization under paragraph 10.1(2)(a) (i.e. a reducing amendment) and until such time as the Superintendent authorizes the reducing amendment, the information included in the AIS should be based on the plan provisions in effect before the reducing amendment was made.

Name Changes Affecting Letters of Credit (LOC)

Employers and plan administrators are reminded that they are expected to be vigilant and knowledgeable about the contractual risk associated with their LOC and should ensure that their LOC are compliant with the PBSA and the *Pension Benefits Standards Regulations, 1985* (PBSR).

For example, if a trustee or an issuer of LOC changes its name, as was recently the case when RBC Dexia Investor Services Trust changed its name to RBC Investor Services Trust in July of 2012, employers and plan administrators are expected to review their LOC and any supporting documents to ensure that they are still valid. Any amendments that are required should be made and any other remedial action that is required should be taken.

Crown Corporations - Reduction of Solvency Special Payments

Crown Corporations are reminded that if they elect to reduce a payment that they are required to make under subsection 9(1.1) of the PBSA, they must meet the prescribed conditions set out in section 9.2 of the PBSR. That is, they must:

- be agents of Her Majesty in right of Canada,
- provide notice to and obtain letters from the appropriate Ministers, and
- file the letters with the Superintendent within 60 days after the reduction is made.

Federally Regulated Plans Opting Out of Grow-In Benefits for Ontario Members

In addition to having members who are employed in “included employment”, as defined in subsection 4(4) of the PBSA, some federally regulated pension plans also cover members who are not employed in “included employment.” These types of plans are known as multi-jurisdictional pension plans. In accordance with section 28 of the PBSR, these plans include members’ benefits which are subject to the provisions of the applicable provincial pension legislation (e.g. the Ontario *Pension Benefit Act* (PBA)).

The Ontario PBA was amended on July 1, 2012 such that, subject to certain limited exceptions, grow-in benefits must be provided to every member whose employment is terminated on or after July 1, 2012.

A provision has been added to section 74.1 of the Ontario PBA to allow employers and the members of jointly sponsored pension plans (JSPPs) and administrators of multi-employer pension plans (MEPPs) to opt out of providing grow-in benefits to their members. The Ontario PBA Regulation provides that existing JSPPs and MEPPs, as at July 1, 2012, will have until July 12, 2013 to opt out of the grow-in benefit provisions.

Federally regulated multi-jurisdictional pension plans may be subject to these provisions. Plan administrators should contact the Financial Services Commission of Ontario for further information or visit their website.

Pension Industry Survey

As communicated in *InfoPensions 7*, OSFI conducted a survey of plan administrators and professional advisors in late 2011 to assess OSFI's effectiveness as a supervisor and regulator and to seek suggestions for improvement. The survey results were posted on OSFI's website in June 2012 and they suggest that stakeholders are generally satisfied with how OSFI supervises and regulates federal pension plans.

OSFI appreciates the feedback provided in this survey and has developed an action plan to address the areas identified for improvement. The action plan includes:

- reviewing and improving written communications with stakeholders to ensure consistent and clear messaging,
- making changes to our website based on feedback received, and
- increasing the awareness of *InfoPensions.*

A follow-up survey specific to *InfoPensions* will be conducted shortly to help OSFI determine ways in which the publication can be improved.

Pension Industry Forum

OSFI will be hosting its fourth annual Pension Industry Forum in Toronto on February 12, 2013. Past Forums focused on topics such as recent legislative changes and their impact on plan administration, as well as OSFI's supervisory activities and expectations related to private pension plans.

Private Pension Plans Division (PPPD) - Staffing Changes

There have been a number of staffing changes in PPPD:

Managing Director

- Tamara DeMos was appointed the Managing Director of PPPD at the end of June 2012. Tamara had been the Director of Supervision in PPPD since June 2011. Judy Cameron, former Managing Director of the PPPD, was appointed Managing Director of OSFI's Approvals and Precedents Division in July 2012.

Director, Supervision

- Pirjo Davitt is now the Director of Supervision in PPPD. Most recently, Pirjo was the Manager of the Approvals Team.

Manager, Supervision

- Paul Rozon is now a Manager within PPPD's Supervision Team. Most recently, Paul was a Senior Supervisor in PPPD.

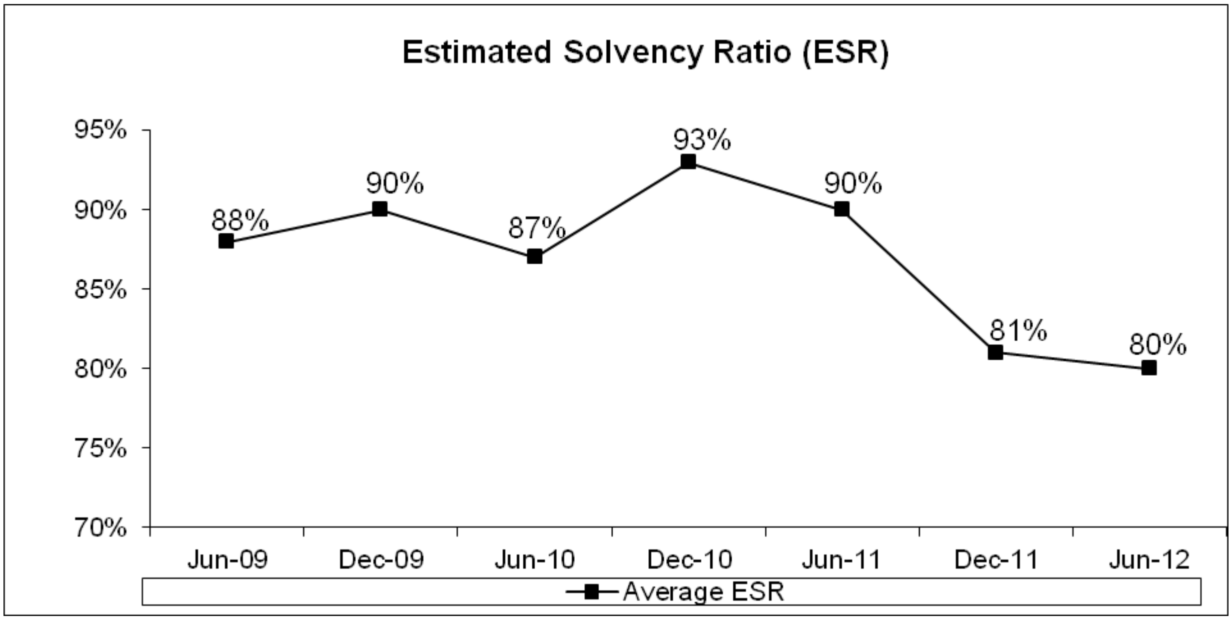
Manager, Approvals

- Krista McAlister has been appointed the Manager of Approvals in PPPD. Most recently, Krista was a Senior Supervisor in PPPD.

Estimated Solvency Ratio (ESR) Results and Charts

OSFI estimates solvency ratios for approximately 400 defined benefit pension plans that it supervises. The ESRs assist OSFI with the early identification of solvency issues that could jeopardize the security of promised pension benefits. Please refer to *InfoPensions 2* for details on how OSFI calculates ESRs.

The weighted average ESR was 0.80 at June 2012, compared to 0.81 at December 2011 and 0.90 at June 2011. The line graph below also shows the previous ESRs dated back to June 2009.



As shown in the bar graph below, OSFI estimated that approximately 92% of the approximately 400 defined benefit plans were underfunded on a solvency basis at June 2012, compared to an estimated 90% at December 2011. At June 2012, 68% of federally regulated pension plans had an estimated solvency ratio of less than 0.80, unchanged from December 2011.