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Pension Plans: The Changing Legal and Regulatory Landscape

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Thought for the Day

It is suddenly cool to be a pension lawyer.

– National Post, March 25, 2013

Talking about pensions may seem deadly boring but it will likely emerge as a much bigger issue in the years to come . . . . Pensions will be the biggest social issue that we're going to be debating in our society over the next 10 years.

– Toronto Star, May 13, 2011

Agenda

1. Target Benefit Pension Plans

2. Bill C-228: the *Pension Protection Act*

3. Variable Payment Life Annuities

4. Borrowing By Defined Benefit Pension Plans

Target Benefit Plans

Features

- Target benefit plans have elements of defined benefit (DB) and defined contribution (DC) pension plans
  - Targeted future pension benefit
  - Fixed contribution rates
- Benefits are targeted, not guaranteed like in a DB pension plan
- Longevity risk and investment risk are both pooled
- Historically only available for MEPPs

Target Benefit Pension Plans

Recent Proposals

- New Brunswick, Alberta, British Columbia
  - Implemented comprehensive legislation for target benefit plans in 2012 (NB) and 2014 (AB, BC)
  - NB and AB permit use of target benefit plans in single-employer pensions
- Canada:
  - The federal government proposed to amend the *PBSA* to permit target benefit plans in 2014 and 2016
- Ontario:
  - Ontario released a consultation paper called “A Permanent Framework for Target Benefits” in March 2023
  - Proposed rules would replace temporary solvency funding regs for MEPPs set to expire 2024

Bill C-228: the *Pension Protection Act*

Features

- Bill C-228 amends the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act* to provide greater protections for pensions in insolvency proceedings
- Received Royal Assent in April 2023
- New super-priority rights
  - Higher priority for amounts required to fund any unfunded liability or solvency deficiency
- Bill C-228 applies to both federally and provincially registered DB plans

Bill C-228: the *Pension Protection Act*

Effects

- Unintended consequences
  - Potential increase in cost of credit for employers with DB plans
  - Potential termination or conversion of DB plans
  - Disincentive to creation of new DB plans
    - DB plans only for the public sector?

Variable Payment Life Annuities (VPLAs)

Features

- Variable periodic payments based on pooled investment and mortality experience
- Members' assets remain in the pool after death for benefit of surviving members
- Meant to optimize lifetime retirement income while ensuring that members do not run out of money
- No direct financial risk for providers

Variable Payment Life Annuities (VPLAs)

Recent Change and Proposal

- Budget 2021 made amendments to the *Income Tax Act* to provide:
  - A member of a pooled registered pension plan may purchase a VPLA
  - A DC pension plan can provide benefits through a VPLA fund
- Budget 2023 amended the *PBSA* and the *Pooled Registered Pension Plans Act* to improve retirement security for plan members and retirees through new frameworks for VPLAs

Borrowing by DB Pension Plans

Previous Rules

- Under the *Income Tax Regulations*, DB plans could only borrow money in certain circumstances:
  - The acquisition of income-producing real property where (i) the borrowed amount does not exceed the cost of the real property and (ii) only the real property is used as security for the loan
  - The term of the loan does not exceed 90 days and the property of the plan is not pledged as security for the loan

Borrowing by DB Pension Plans

New Rules

The 2023 Budget amended the *Income Tax Regulations* to:

- Maintain the borrowing rule for real property acquisitions
- Replace the 90-day term limit and permit DB plan borrowing except where:
  - The net assets (determined at the beginning of the plan year) exceed 125% of the plan's actuarial liabilities (based on most recent actuarial valuation)
    - Too well-funded to borrow
  - Aggregate borrowed amounts would exceed 20 per cent of the value of the plan's assets (net of unpaid borrowed amounts)
    - Too leveraged to borrow more

Questions

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THANK YOU