The 2020 Agreement Respecting Multi-Jurisdictional Pension Plans became effective July 1, 2020

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On July 1, 2020, the 2020 Agreement Respecting Multi-Jurisdictional Pension Plans became effective (the “2020 Agreement”). The 2020 Agreement replaces certain agreements previously in place between signatories of the 2020 Agreement.

Update

The 2020 Agreement prepared by the Canadian Association of Pension Supervisory Authorities (“CAPSA”) came into effect July 1, 2020. According to the consultation paper released by CAPSA in connection with the 2020 Agreement, there are “over 2,000 multi-jurisdictional pension plans in Canada with more than two million members across the country.”

Overview

The 2020 Agreement replaces the 2016 Agreement Respecting Multi-Jurisdictional Pension Plans (the “2016 Agreement”) and certain other agreements previously in place between signatories of the 2020 Agreement. Manitoba and Newfoundland and Labrador are the only jurisdictions with pension legislation that are not parties to the 2020 Agreement. As a result of the almost pan-Canadian application of the 2020 Agreement, it will better address some of the “complexity and legal uncertainty” (per the CAPSA consultation paper) associated with multi-jurisdictional pension plans. Administrators of such plans will have increased opportunity to streamline and harmonize certain aspects of pension plan administration.

The general structure of the 2020 Agreement is unchanged from the 2016 Agreement, in that it sets out areas in which the rules of the “major authority” (the pension regulator with which the plan is registered) will apply in lieu of the rules of a “minor authority” (any other pension regulator whose pension legislation applies as a result of the plan membership). The 2020 Agreement sets out matters that are subject to the provisions of the pension legislation of the major authority’s jurisdiction, including (but not limited to) plan registration, funding, and the provision of certain information.

Defined Benefit Plan Funding

From a defined benefit pension plan funding perspective, the 2020 Agreement eliminates exceptions to the application of the major authority’s funding rules and modifies the asset allocation methodology for major plan events (such as a wind-up). These changes are intended to address recent funding reforms in various jurisdictions, including the elimination of solvency funding. They will also provide greater clarity in a plan split scenario, including in the corporate transaction context. The 2020 Agreement adds new provisions to harmonize certain funding-related requirements in connection with a plan administrator obtaining a discharge on purchase of an annuity from an insurance company to constitute a final payment of those benefits (where such a discharge is provided for under the applicable pension legislation). Specifically, the major authority's "annuity discharge requirements" related to contributions, minimum funding and solvency levels, and the related actuarial valuation reports will apply. However, administrative matters related to annuity discharges, such as employee disclosure obligations, are not among the requirements that will be governed by the major authority's rules.

Plan Administration

From a plan administration perspective, the 2020 Agreement includes clarifying amendments with respect to commuted value transfers where a plan is underfunded. The wording clarifies that the amount of the initial payment and the deadline for the transfer/payment of the residual amounts is governed by the major authority's rules. This language may be of particular assistance to plan administrators given the current economic climate.

A minor but welcome change relates to the obligation to provide statements for active members and other persons. The 2020 Agreement now contemplates that statements required to be provided on other-than-annual basis will be subject to the rules of the major authority. Ontario, for instance, requires inactive statements to be provided biennially. Such inactive statements were not covered by the reference to "annual statements" in the 2016 Agreement. Interestingly, although several jurisdictions have also recently amended the pension legislation to permit electronic communication of certain information (most recently, Alberta), the 2020 Agreement does not explicitly address this form of communication. Given the current remote work environment for many businesses, electronic communication will be very helpful to plan administrators in maintaining regulatory compliance with disclosure obligations. The 2020 Agreement may be silent regarding electronic communication because of the consent component contemplated under this form of communication. Jurisdictions across Canada have varyingly adopted opt-in or opt-out approaches to consent, either through the pension legislation or through more broadly applicable electronic communication legislation.