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The Association of Canadian Pension Management
L'Association canadienne des administrateurs de régimes de retraite

January 23, 2020

Pension Initiatives Unit, Pension Policy Branch
Ministry of Finance
7 Queen's Park Crescent
5th Floor, Frost Building South
Toronto, ON M7A 1Y7
Email: pension.feedback@ontario.ca

Re: Our comments on the consultation draft for the Pension Benefits Amendment Act regarding individual pension plans (IPPs) and Designated Plans

To Whom It May Concern:

ACPM is the leading advocate for plan sponsors and administrators in the pursuit of a balanced, effective and sustainable retirement income system in Canada. We represent plan sponsors, administrators, trustees and service providers and our membership represents over 400 companies and retirement income plans that cover millions of plan members.

We are pleased to present our comments on the consultation draft for the Pension Benefits Amendment Act regarding individual pension plans (IPPs) and designated plans (Designated Plans).

We note that pension plans are voluntary. The employers that established IPPs and Designated Plans presumably knew that the plans would be subject to the PBA and understood what that entailed. Likewise, we do not see that an exemption for newly created IPPs and Designated Plans would encourage their creation.

We are surprised by a proposal that would enable some pension plans to be exempt from the PBA. The move almost coincides with the establishment of a regulatory system that is funded solely by its participants. An immediate concern posed by the draft is whether a decrease in the revenues of the Financial Services Regulatory Authority of Ontario (FSRA) would mean that its fixed costs have to be spread across a smaller base of pension plans. In that regard, we recognize that a reduced revenue base might also allow FSRA to engage in more targeted regulation. We expect that targeted regulation of other pension plans could be pursued if FSRA were to treat IPPs and Designated Plans as subject to regulatory review and intervention only in response to a member complaint.

Draft s. 102.4: Exemption upon consent of members and beneficiaries

Our principal concern is that consent must be obtained from each "person entitled to benefits under the pension plan". It is important to clarify who those persons are.

The PBA does not otherwise refer to persons entitled to “benefits”. It does, however, refer to persons entitled to payment, to a pension, to pension benefits, to a deferred pension, to a survivor benefit and to other benefits. The introduction of a “person entitled to benefits” would create real uncertainty in interpretation, particularly as the meaning of “benefits” under the PBA was previously litigated with surprising results in Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services), [2004] 3 SCR 152. Absent clarification, we are concerned that those persons entitled to benefits might be interpreted as extending to contingent beneficiaries and spouses who are not yet surviving spouses, a result that would likely render the exemption impossible to obtain.

In order for the employer to elect, it requires the consent of all beneficiaries. In practice, obtaining consent from 100% of beneficiaries, even in a plan with few members, can be of sufficient difficulty that the possibility of an exemption from the PBA is a chimera. If Ontario wishes to exempt IPPs and Designated Plans from the PBA, perhaps it should do so without imposing a requirement for beneficiary consent.

Draft s. 102.5): Exemption for new IPPs and Designated Plans in which all members are connected

We do not see a change in the market that justifies an exemption for new IPPs and Designated Plans but that justifies continued regulation of all other IPPs and Designated Plans. If Ontario proceeds to make coverage under the PBA optional for existing IPPs and Designated Plans whose members are connected with the employer, coverage should be similarly optional for new plans. Many IPP members are business owners whose personal assets are exposed to their business creditors. Some members may prefer that the creditor protection provisions of the PBA apply to their retirement savings and would not view favourably the elimination of those protections in new plans. That said, Ontario should not expect that IPPs will be created at the same rate as in the past, as changes to the Income Tax Act (Canada) and its regulations have made their establishment less attractive than had been the case.

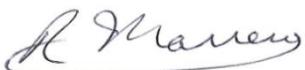
With respect to the language of s. 102.5(5), it states that no individual may become a member of the plan unless he or she is connected with the employer. Consideration should be given to how that would be enforced and how regulation would follow if an individual who is not connected joins the plan. In that case, for example, would member rights be prospective only?

Draft s. 102.6: Exemption upon revocation of registration

We agree that an IPP or Designated Plan should be exempt from the PBA if its tax registration is revoked.

Thank you for the opportunity to comment and we are available to discuss them at your convenience.

Sincerely,



Ric Marrero
Chief Executive Officer, ACPM