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CONVERSIONS AND MERGERS OF PUBLIC SECTOR SINGLE-EMPLOYER PENSION PLANS INTO EXISTING OR NEW JOINTLY SPONSORED PENSION PLANS

What is the status of amendments to the Pension Benefits Act to permit single-employer pension plans (SEPPs) to convert or merge with existing jointly sponsored pension plans (JSPPs)?

SUGGESTED RESPONSE

- **Legislative amendments and final regulations to the Pension Benefits Act (PBA) were proclaimed on November 1, 2015.**

- **The government is considering additional measures, as necessary, to facilitate SEPP to JSPP mergers.**

    - **For example, the government has included an amendment in the 2017 Spring Budget Bill to provide additional flexibility to plan administrators when structuring mergers.**

- **Several employers and employee groups in Ontario's broader public sector (BPS) are interested in converting to jointly sponsored plans or merging with an existing JSPP.**

- **In JSPPs, decisions on benefit levels and contribution rates are made by representatives of employers and employees, while responsibility for funding shortfalls is shared by employers and plan members.**

- **Because JSPPs are different from SEPPs in a number of important ways, the legislative amendments ensure that in a conversion or merger:**

    - **Retiree pensions are replicated,**
    - **The value of member benefits is preserved.**
    - **The consent of plan beneficiaries and the Superintendent of Financial Services is required.**

CURRENT STATUS

On November 1, 2015, the legislative framework to facilitate SEPP to JSPP mergers was proclaimed. Based on stakeholder feedback and to further enable mergers, the government included an amendment to the framework in the 2017 Spring Budget Bill. The amendment would provide SEPP administrators with an additional tool to help ensure that a transferring active member receives the full amount of the commuted value of their SEPP pension when transferring to a JSPP.

Specifically, the amendment would allow the SEPP administration to transfer a portion of that member's pension directly to the member, in addition to the amount transferred to the JSPP by the SEPP, so that the member, in total, receives the full value of their SEPP pension on a transfer. Previously, if even a single active member failed to receive the same value in a JSPP as in their SEPP, the entire transaction could not proceed.

Additional regulatory changes are also under consideration to better facilitate SEPP to JSPP mergers.

PBA Amendments

Bill 14, the Building Opportunity and Securing Our Future Act (Budget Measures), 2014, amended the PBA to facilitate the transfer of asset from employer-sponsored SEPPs to JSPPs and allow SEPPs to be converted to JSPPs. These amendments created the authority to prescribe requirements for the conversion of a SEPP to a JSPP.

The amendments to the PBA created a number of protections for benefits earned in a SEPP that are subsequently transferred to a JSPP.

- To safeguard the pensions of retirees, the amendments require the new JSPP, at a minimum, to replicate their pensions and those of other plan beneficiaries.
- To protect benefits already earned by employees, the amendments require the new JSPP to preserve commuted values for plan members at the date of conversion.
- The amendments also hold the employer responsible for additional funding obligations related to benefits earned in the SEPP, should the JSPP subsequently wind up underfunded.

To ensure that the plan conversion is transparent and voluntary, the amendments require:

- The employer provide notice to all plan beneficiaries and trade unions;
- The consent of plan beneficiaries prior to the plan conversion; and,
- The approval of the Superintendent of Financial Services.

In some circumstances, plan sponsors may prefer to transfer their pension responsibilities to an existing JSPP. Where a conversion is to be implemented in this manner, the amendments require:

- The employer and sponsors of the JSPP to enter into an agreement to transfer the SEPPs assets and liabilities.

It is intended that the regulations ensure accrued benefits are protected and that the assets transferred do not unduly enrich existing JSPP beneficiaries.

BACKGROUND

In recent years, there has been significant interest by public-sector SEPPs in converting to new JSPPs or merging with existing JSPPs.
They believe that by adopting the features of a JSPP, plans will be better governed, more predictably affordable for all stakeholders, and more likely to be sustainable in the long term.

In Budget 2013, the government committed to exploring the issue and, if necessary, developing a framework to facilitate these transactions. Budget 2014 made amendments to the PBA, providing that framework.

Key Differences between SEPPs and JSPPs

The main differences between SEPPs and JSPPS include the following:

- SEPPs are generally administered by employers, whereas JSPPs are jointly administered by employee/union and employer representatives;
- SEPPs cannot reduce accrued (i.e. already earned) benefits, whereas JSPPs can reduce them if the pension plan is wound up and has insufficient assets;
- Employers are responsible for funding deficits in SEPPs, whereas both employers and employees are responsible for funding deficits in JSPPs;
- SEPPs are generally required to provide ”grow-in” benefits for eligible members whose employment is terminated by the employer, whereas JSPPs can opt-out of providing these benefits; and
- SEPPs are generally covered by the Pension Benefits Guarantee Fund (PBGF), whereas JSPPs are not.

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