

NEW REGULATORY AUTHORITY FOR PENSIONS ON ITS WAY

Posted on November 30, 2016

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Creation of the Financial Services Regulatory Authority

On November 14, 2016, the Ontario government announced that it will introduce legislation to create the new Financial Services Regulatory Authority (“**FSRA**”). The FSRA’s initial parameters are set out in Ontario’s recent omnibus Budget legislation, the *Building Ontario Up for Everyone Act (Budget Measures), 2016* (“**Bill 70**”).

The FSRA will be an independent body responsible for industry sectors falling within the current purview of the Financial Services Commission of Ontario (FSCO), Ontario Financial Services Tribunal (FST), and Deposit Insurance Company of Ontario (DICO), including pension plans, mortgage brokers, insurers, and credit unions. The establishment of the FSRA follows recommendations made by an expert panel put together in 2015 to review the mandates of the FSCO, FST and DICO.

Bill 70, which received first reading on November 16, 2016, creates the structure for the FSRA. The FSRA will be self-regulating and be responsible for monitoring pension plans that have been registered in Ontario. The FSRA will have 3 to 11 board members and be led by a Chairperson selected by the Minister. Moreover, as presently envisioned, the FSRA will have the power to levy administrative penalties for violations of pension standards. The *Financial Services Regulatory Authority of Ontario Act, 2016*, which is established under Bill 70 and creates the FSRA, would allow the Lieutenant Governor in Council to assess the expenses incurred by the Ministry of Finance and/or FSRA with respect to all entities that fall within the FSRA’s scope.

At present, the proposed legislation is an initial framework. Establishing the FSRA will very likely require a more detailed regulatory scheme to fully govern pensions and other instruments within its mandate. We will continue to update you as the Ontario government makes further announcements and develops its existing proposal.

Amendments to Ontario’s Pension Benefits Act

In addition to creating the FSRA, Bill 70 proposes several amendments to the Ontario *Pension Benefits Act*, including:

- **Liabilities on Wind-Up:** Allow the Ontario government to create regulations exempting an employer

from requirements to make payments into a pension plan on windup.

- **Portability for Retirees:** Amend section 42 of the *Pension Benefits Act* to allow retired members to elect a portability transfer from a pension plan if permitted by the plan itself.
- **Annuity purchases on wind up:** Amend the *Pension Benefits Act* to require an administrator appointed by the Superintendent to obtain approval prior to purchasing annuities in satisfaction of liabilities of the plan on wind-up.
- **Administrative Monetary Penalties:** Amend the *Pension Benefits Act* to allow the Superintendent to impose administrative monetary penalties (AMPs), which are a form of civil penalty, rather than a criminal sanction, levied by the government for failure to comply with legislative obligations. Unlike criminal fines, AMPs are due immediately once levied, subject only to rights of review (i.e. appeal to a tribunal) set out in the relevant regulatory scheme. For this reason, AMPs are usually smaller penalties than fines.
- **Allocation of monies from the Pension Benefits Guarantee Fund:** This fund was established to cover defined benefit pension benefits. Bill 70 would amend the *Pension Benefits Act* to establish regulations in relation to the timing and allocation of fund monies to pension plans.

As discussed above, we will continue to update you as the statutory and regulatory changes proposed in Bill 70 proceed through Queen's Park. We will keep you informed of any substantial changes from the initial proposed framework and advise when final legislation is passed.

by Kyle Lambert and Shauna Cant, Student-at-Law

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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