

Regulations Relating to Pension Division on Marriage Breakdown (Bill 133)

Overview

Bill 133, the *Family Statute Law Amendment Act, 2009*, received Royal Assent in May 2009. Bill 133 introduces new rules on pension asset division on marriage breakdown. The new pension division regime introduces two major reforms:

Valuation: The valuation of pension assets on marriage breakdown will be determined according to a prescribed formula and calculated by plan administrators.

Settlement: Immediate settlement of the former spouse's entitlement where there is a court order, family arbitration award or domestic contract awarding a payout from the pension.

- For former spouses of active and deferred members, settlement is effected through a lump sum transfer out of the plan.
- For former spouses of retired members, settlement is effected through a division of the pension in pay.

The provisions of Bill 133 that amend the *Pension Benefits Act* (PBA) require the enactment of corresponding regulations prior to proclamation. The government is interested in feedback on this important initiative. Draft regulations, along with this accompanying paper, are posted on the Regulatory Registry for public consultation.

Contents of Draft Regulation

The draft regulation contains the majority of the content required to implement the new regime. In particular, the draft regulation:

- outlines the valuation methodology, including rules for calculating both the *preliminary value* (the total value of the pension up to the "family law valuation date") and the *imputed value* (the portion of the preliminary value attributable to the period of marriage or cohabitation, as applicable);
- describes any exceptions or adjustments to the preliminary valuation;
- describes the circumstances in which a former spouse would be entitled to inspect plan documents;
- prescribes rules on how to apply for a valuation and, where applicable, payout of the former spouse's entitlement;

- sets out the contents of the valuation statement to be provided by plan administrators;
- lists certain transfer options available to former spouses of active and deferred members entitled to a payout from the pension plan;
- outlines the rules for updating the imputed value if a transfer of a lump sum occurs;
- describes the circumstances that may limit or delay the payout of the former spouse's entitlement;
- prescribes rules for adjusting the member's pension if the former spouse's entitlement is paid out; and
- updates regulations that apply to the transitional provisions outlined in Bill 133.

Contents of Regulation Currently Under Consideration

Not all elements of the new pension division regime are reflected in the accompanying draft regulation. The government welcomes public comment on the following elements as well.

1. Hybrid Plans

Options regarding a separate valuation, updating, and adjustment methodology for "hybrid" plans are being considered, and the government invites further suggestions. This would include a methodology for both "combination" plans, where a member would be entitled to a stand-alone defined benefit (DB) and defined contribution (DC) benefit (e.g., as a result of a plan conversion), as well as plans which provide a benefit formula containing inter-connected DB and DC benefits (e.g., plans with a minimum guaranteed DB floor).

2. Amendments to PBA Regulation Regarding Locked-in Accounts/ Annuities

Amendments to General Regulation 909 under the PBA will be required to account for the option of an immediate transfer of an eligible former spouse's entitlement to a locked-in account. It is anticipated that amendments will be made to:

- explicitly permit a former spouse of a member or deferred member to transfer his/her entitlement to a locked-in account (i.e., a life income fund (LIF) or a locked-in retirement account (LIRA)); and
- base the receipt of payment from such locked-in account on the former spouse's age rather than the age of the member.

Further, amendments will be required to clarify that locked-in accounts and annuities covered by the PBA will be available for immediate settlement and will continue to be subject to the “50% rule” —that is, that the former spouse cannot receive more than 50% of the value of the retirement vehicle’s assets, accrued during the period of marriage or cohabitation, as applicable, as part of an equalization payment.

3. Transfer Option under s. 67.3(2), para. 4 of the PBA

Bill 133 permits an eligible former spouse to leave his/her lump sum entitlement in the plan to the credit of the former spouse. This option would only be available with administrator consent and in circumstances to be prescribed. The regulations would set out rules that provide for:

- on-going disclosure of plan documents and information to the former spouse while his/her entitlement remains in the plan;
- the conditions for commencement of payment to the former spouse of his/her entitlement;
- unforeseen circumstances arising while the former spouse’s entitlement remains in the plan (e.g., death, wind-up); and
- the extent of a former spouse’s rights under the plan.

4. Miscellaneous Amendments to PBA Regulation

Other minor amendments to Regulation 909 will be required to account for the new PBA provisions in Bill 133.

Issues Arising from Pension Reform Initiatives (Bills 236 and 120)

Over the past year, the government has been engaged in a number of pension-related initiatives. In May and December 2010, the Legislature passed Bill 236, the *Pension Benefits Amendment Act, 2010* and Bill 120, *Securing Pension Benefits Now and for the Future Act, 2010*, respectively.

A number of the initiatives introduced in these bills may affect the new pension division regime set out in Bill 133 and its corresponding regulations. In particular, rules regarding target benefits, the payment of variable benefits from a DC plan, phased retirement, and optional ancillary benefits may require adjustment to the new regime. It is anticipated that such adjustments will be considered once these initiatives have been fully implemented through regulation.