EPPA Update 00-01

NEW LEGISLATION IN EFFECT

Employment Pension Plans Amendment Act and the *Employment Pension Plans Regulation*, both of which came into force March 1, 2000. **Users of this summary are strongly urged to refer directly to the appropriate sections of the Act and Regulation, as this summary is for information purposes only and has no legal authority.** Section numbers beginning with "A" refer to the *Employment Pension Plans Act* (EPPA), while sections of the Regulation begin with "R". The Regulation and the Amendment Act, as well as the *Employment Pension Plans Act*, are both available from the Alberta Queen's Printer, either via the Internet (website address: http://www.gov.ab.ca/qp/) or in hard copy. A consolidation of the EPPA, incorporating the amendments, will be available shortly from Queen's Printer.

1. AMENDMENTS TO PENSION PLANS

1.1 - DECEMBER 31 DEADLINE FOR FILING AMENDMENTS, R. s. 69

Amendments to pension plans required as a result of these changes to the Act and Regulations must be submitted to the Superintendent for registration no later than December 31, 2000. If the administrator is submitting other amendments during the year, the amendments arising from the legislative changes must be filed at the same time as those amendments.

1.2 - DEFINITION OF "SPOUSE", A. s. 1(1) (rr), s. 27 (1)

The definition of "spouse" is amended to include married persons who have been separated for less than three years. Previously, a married person was no longer considered a spouse as of the moment of separation. The definition of a common-law spouse has not changed in basic meaning but a phrase requiring that the couple represent themselves in the community as "consorts" has been removed in favour of the term "marriage-like relationship". The new definition reads:

> "spouse" means, in relation to another person,
>
> (i) a person who, at the relevant time, was married to that other person and had not been living separate and apart from that other person for 3 or more consecutive years, or
>
> (ii) if there is no person to whom subclause (i) applies, a person of the opposite sex who had lived with that other

person in a marriage-like relationship for the 3-year period immediately preceding the relevant time;

It is not necessary for plans to adopt exactly the same definition as appears in the Act, although many do. An amendment to section 27(1) clarifies that plans are permitted to provide more favourable treatment by expanding the definition of "spouse" to cover more categories of "spouse". For example, a plan could provide benefits for same-sex spouses, or entitle common-law spouses to benefits after less than 3 years of cohabitation. However, any definition adopted by the plan must preserve the priority set out in the definition in the Act, so that no persons included in the Act definition are disentitled or displaced through recognition of another category of spouse.

1.3 - VESTING, LOCKING-IN, A. s. 31, 35

For service from January 1, 2000 forward, the right to a pension must vest in a member after two years of continuous plan membership. (In a Specified Multi-Employer Plan, this is defined as fiscal years in which the member had at least 350 hours of employment and participated in the pension plan.) The previous minimum standards for vesting remain in effect for service prior to 2000.

A plan sponsor may choose to make the new rule partially or fully retroactive, since the Act permits plans to exceed minimum standards. Because of the change in criteria from "years of continuous employment" to "years of continuous plan membership" a situation could arise where a person would be vested with respect to his service from 1987 to 1999, but not with respect to his service after 1999. To avoid this outcome, it is recommended that the plan vest the person for both periods if the vesting criterion for one of those periods is met.

Administrators are reminded that because of the locking-in provisions in section 35, once a pension is vested in a member according to the Act's minimum vesting standards, it must also be locked in. A plan that contains more generous vesting provisions is not required to insist on locking in of amounts that would not be required to be vested and locked in under the Act. It should also be noted that plans are now required to permit the unlocking of small amounts when a member terminates (see **section 1.6** below).

1.4 - PRE-RETIREMENT DEATH BENEFITS, A. s. 39

For service from January 1, 2000 forward, the death benefit payable to any other party (a surviving spouse, another beneficiary, or the estate) where the deceased member was vested but had not yet commenced his/her pension is 100% of the commuted value of the benefit. The benefit is payable as a lump sum to the beneficiary or the estate. The spouse's benefit is locked in if the member's benefit would have been locked in upon the member's termination, and is payable either as a pension commencing when the spouse reaches retirement age (within 10 years of the plan's normal retirement age), or as a transfer to a locked-in retirement account. A plan may provide for immediate

pensions to spouses of deceased members by way of providing more favourable treatment than the minimum standard, as permitted under section 20 of the Act.

1.5 - UNLOCKING DUE TO SHORTENED LIFE EXPECTANCY, A. s. 46

The Act is amended to remove the specific reference to mental illness from the clause allowing a plan to permit a terminally ill person to unlock their pension money. Mental illness is not terminal, and it is inappropriate to unlock money in such circumstances. The section now says a plan may have a provision permitting the unlocking if the owner has "a terminal illness or a disability that is likely to shorten his life considerably". The physician's certification should state that the person's life is likely to be shortened considerably as a result of his terminal illness or disability. The physician is not required to state a specific life expectancy.

1.6 - SMALL AMOUNT COMMUTATION, A. s. 46, R. s. 45

Pension plans, Locked-In Retirement Accounts (LIRAs), Life Income Funds (LIFs) and Locked-in Retirement Income Funds (LRIFs) must permit a terminating member or owner, or the surviving spouse, to unlock his or her money if it is below a threshold set in Regulation. Previously, small amounts could be commuted only if the originating pension plan allowed it. For a defined benefit plan or a hybrid plan containing a defined benefit provision, the threshold is linked to the Canada Pension Plan's Year's Maximum Pensionable Earnings (YMPE), which changes annually according to the change in the Average Industrial Wage. The YMPE for 2002 is $39,100. The thresholds are set at a pension amounting to less than 4% of YMPE — a pension of $130.33 per month in 2002 — or a lump sum amounting to less than 20% of YMPE, or $7,820 in 2002. For defined contribution plans, LIRAs, LIFs and LRIFs, the threshold is 20% of YMPE.

A new rule is introduced in the Regulation that money in a LIRA, LIF or LRIF may be unlocked if, at age 65 or older, the total amount the former plan member owns in all of his locked-in funds (excluding locked-in funds in a defined benefit pension plan) is less than 40% of YMPE ($15,640 in 2002).

1.7 - UNLOCKING FOR NON-RESIDENTS, R. s. 39(11)

Administrators should be aware that they may, if they wish, accommodate former employees who are no longer residents of Canada and who wish to transfer their pension funds to a foreign financial institution. The Regulation governing Locked-In Retirement Accounts has been changed to allow the financial institution to offer unlocking of locked-in funds where the individual has received clearance from the Canada Customs and Revenue Agency confirming that the person is no longer a Canadian taxpayer. If administrators wish to accommodate such individuals, their plan should allow portability options to be exercised at any time after termination, thus permitting the former member to transfer his or her funds to a LIRA and then to a foreign financial institution.

1.8 - TRANSFER TO RRSP,
A. s. 28(3)

A pension plan must provide that where a lump sum is payable to any person (that is, the money to be released from the plan is not locked in), then, at the option of that person, that payment may be transferred to an RRSP. It is the responsibility of that person to ensure that he/she is not prevented by the tax rules from making the transfer. Most plans already permit this, but some have rules that expressly limit refunds to cash, thus triggering a tax withholding. Note that beneficiaries other than spouses are not permitted by the tax rules to make tax-exempt rollovers.

1.9 - PENSION DIVISION ON MARRIAGE BREAKDOWN,
A. Part 4, R Part 4

For the first time, the Act contains specific rules for dividing pensions on marriage breakdown. The provisions give the spouse the right to have his or her share of the member's pension entitlement transferred out of the pension plan at the time of the marriage breakdown, rather than waiting until a benefit becomes payable to the member. All pension plan administrators should ensure that their plan text reflects spouses' right to this type of transfer. See also **section 5.2** below.

1.10 - SUSPENSION AND RE-EMPLOYMENT RULES,
R. s. 31

An option formerly permitted by the Regulation, in respect of re-hired pensioners, has been removed. The Regulation previously permitted the member to continue to receive the pension and to participate as an active member of the plan at the same time. As this option is not permitted by the tax rules, it has been removed from the Regulation. The choices now available are

1) that the pension is to continue and the employee does not rejoin the plan as an active member, or
2) the pension is suspended, the employee becomes an active member, and the subsequent retirement pension is re-calculated taking into account the new period of service as well as the previous service.

1.11 - MINIMUM COMPULSORY TRANSFER,
A. s. 38, R. s. 36

Pension plans are allowed to force a terminating member to transfer out his entitlements if the commuted value is below a threshold set out in the Regulation. The threshold has been increased to 20% of CPP's YMPE in the year in which the termination takes place. The threshold for the year 2002 is $7,820.

1.12 - PLAN REVIEWS,
R. s. 2(1)(r); 9

A pension plan with a defined benefit provision may state a review date (regular actuarial valuation date) other than the end of the plan fiscal year. Previously, the plan's review date was prescribed in the Regulation to be the end of the plan fiscal year. However, once an alternate date has been chosen, it may not be changed for at least 5 years. Regular valuations will take place every three years, using the new valuation date.

Plans must be reviewed, or the latest review revised, where there has been an amendment to the plan **or where discretionary benefits have been provided under the plan** affecting the cost of benefits, creating an unfunded liability or otherwise affecting the solvency or funding of the plan. Previously, the Regulation required new or revised valuations

where a plan amendment affected costs or funding, but there was no requirement for a new or revised valuation following the granting of discretionary benefits.

1.13 - AMENDMENTS FOR FLEX PLANS, PHASED-IN RETIREMENT,
(various sections)

Two optional features of pension plans are permitted under the new Act and Regulations: optional ancillary contributions (under "flexible pension plans", where the employee may make optional contributions under a defined benefit provision to purchase ancillary benefits) and phased-in retirement. Plan drafters should consult **sections 5.6 and 5.7** of this document, and the provisions of the Act and Regulation, to determine how the plan must be amended if these optional features are adopted by a plan sponsor.

2. COMPLIANCE – FILING

2.1 - PLANS FOR SPECIFIED INDIVIDUALS,
A. s. 1(1)(ii), A.s. 14 (3), R. s. 6

A new category of pension plan, the Plan for Specified Individuals (PSIs), is created. To qualify, a plan's membership must cover only employees who own a substantial part or all of the business employing them, or who earn more than 2.5 times the Canada Pension Plan's Year's Maximum Pensionable Earnings ($97,750 in 2002).

These plans will have fewer compliance requirements than other registered pension plans. Administrators are reminded, however, that the filing requirements of Canada Customs and Revenue Agency (CCRA – formerly Revenue Canada) still apply. As the plans' members are in a position to protect their own interests, there is a reduced need for scrutiny. The administrator must file an application for registration and an annual certification of compliance. Existing plans will be sent a form on which the administrator will be asked to indicate whether the plan falls into this category. Annual Information Returns, triennial actuarial valuation reports and cost certificates are not required to be filed (although valuations must continue to be performed), but a plan termination report must be filed. Fees will be payable only at registration and on plan termination. The fee for registration of a new plan is $250; for termination, the fee is $70. Please see **section 5.1** below for further information about PSIs.

2.2 - MULTI-UNIT PENSION PLANS (MUPPs),
A. s. 1(1)(z) s. 11

A new category of pension plan, the multi-unit plan, (MUPP) is created. These plans are multi-employer plans that are not usually collectively bargained. A board of trustees must administer the plan, or alternatively, one employer may be appointed as the plan administrator, who is then responsible under the legislation for funding and other compliance issues. If a board of trustees is established, it can be comprised of employer representatives only, or, if the employers so wish, employees can be represented.

Existing plans will be sent a form on which the administrator will be asked to indicate whether their plan falls into this category. A pension plan which has one major employer and a number of wholly-owned or

effectively controlled subsidiaries would not be considered a MUPP if the major employer clearly takes responsibility as plan sponsor.

Employers must sign a participation agreement to join the plan. In most respects multi-unit plans are treated as single-employer pension plans. Unlike collectively bargained plans, the employer's liability for funding is not limited to negotiated contribution rates. To distinguish multi-unit plans from collectively bargained multi-employer plans, the latter are renamed Specified Multi-Employer Plans (see **section 2.4** below).

2.3 - MUPPs - PARTICIPATION AGREEMENTS, TRUST AGREEMENT, A. s. 11, R. s. 5, A. s. 19, R. s. 26

Multi-Unit Pension Plans (MUPPs) administered by Boards of Trustees (see **section 2.2** above) must file a trust agreement with Employment Pensions. A MUPP where one employer is designated administrator must file a copy of the agreement designating that employer as administrator. They must also file a participation agreement (or agreements). A participation agreement can be between the Board of Trustees and the employers, or among the employers if one employer is designated administrator of the plan. Participation agreements must set the terms of employer participation in the plan, bind the participating employers to the terms of the trust deed or agreement, and make each participating employer responsible for contributions and special payments under the plan.

2.4 - SMEPPs - SUPERINTENDENT TO DESIGNATE, A. s. 1(1)(qq)

The category of plans formerly known as Multi-Employer Pension Plans (MEPPs) has been re-named Specified Multi-Employer Pension Plans (SMEPPs). They will be designated as such by the Superintendent, who will be sending a letter notifying all these plans of their designation. These are union-sponsored collectively-bargained pension plans with multiple participating employers.

2.5 - SMEPPs - AUDITED FINANCIAL STATEMENTS, A. s. 14(3)(d), R. s. 11(2)

Specified Multi-Employer Pension Plans (see **section 2.4** above) are required to file Audited Financial Statements with the Superintendent, within 60 days after the administrator receives them from the auditor.

2.6 - SMEPPs - CUSTODIAN AGREEMENTS, R. s. 26, 53

Specified Multi-Employer Pension Plans (see **section 2.4** above) are required to file custodian agreements with the Superintendent. A custodian agreement, between a Board of Trustees and the financial institution that is holding the funds for the Board of Trustees, delegates custodial functions to the financial institution.

2.7 - PAYING AGENT AGREEMENTS, R. s. 26

Any pension plan for which there exists an agreement between the plan administrator and the fund holder that gives the responsibility for making actual pension payments to the employer (as opposed to the fund holder) must file a copy of that agreement with the Superintendent.

2.8 - FILING NOTIFICATION OF ADVERSE AMENDMENTS, R. s. 12, 27

In addition to the existing requirement that pension plan members be given an explanation or summary of an amendment after the amendment is made, the Superintendent may require the explanation

to be given to members in advance of registering an amendment if the amendment adversely affects the rights of members or others entitled to benefits. If the advance explanation for members is required, the Superintendent will delay registration and notify the plan administrator in writing after the amendment is submitted for approval, and the plan administrator must provide the explanation to members within 14 days of being served that notice. The administrator must also send a copy of the explanation to the Superintendent and certify the date that the explanation was provided to members. The amendment will not be registered until 45 days after the explanation was sent to members. Provided the amendment is legal, the Superintendent will not withhold approval.

3. COMPLIANCE – FUNDING, INVESTMENTS

3.1 - BORROWING AGAINST ACTION PLAN ASSETS, R. s. 54

An administrator is not permitted to borrow money on behalf of the plan except for a period of 90 days or less. Assets of the plan are not to be pledged against the borrowing in an amount exceeding 110% of the amount borrowed.

3.2 - NO SIPP SELF-DIRECTED DC PLANS, R. s. 51)

Plans consisting entirely of member-directed defined contribution accounts are not required to have a Statement of Investment Policies and Procedures (SIPP). Instead, however, they are required to provide sufficient information and choices to enable members to make informed, prudent investment decisions (see **section 4.9** below).

3.3 - REFUSAL OF AMENDMENTS TO SMEPPs WITH SOLVENCY DEFICIENCIES, A. s. 81(4)

The Superintendent may refuse to register an amendment to a specified multi-employer plan if the plan already has a solvency deficiency before taking into account the effect of the amendment. This discretion will be used only if the Superintendent has concerns about the plan's ability to maintain proper funding.

3.4 - COMPENSATION OF OFFICERS, TRUSTEES AND ADMINISTRATORS, R. s. 54(1)

An officer or employee of an employer, a trustee or administrator of a plan, or a trade union whose members are members of a plan, or any officers or employees of the trade union, may not benefit by way of fee, brokerage, commission, gift or other consideration, from any investment transactions made by the plan. This does not include performance-based compensation arrangements for personnel who are the pension fund's investment managers. It is designed to prevent conflicts of interest in investment decisions.

4. DISCLOSURE TO MEMBERS, ETC.

4.1 - NAME OF PLAN, CCRA DESIGNATION NUMBER ON STATEMENTS, R. s. 14, 15, 16, 17, 19, 22

All statements to members or other beneficiaries (annual, termination of member, termination of plan, retirement, death of member) must include the name of the plan and its Canada Customs and Revenue Agency registration number. This will assist regulators to identify the proper plan where a member or other beneficiary has an inquiry.

4.2 - DISCLOSURE TO MEMBER AND SPOUSE ON MARRIAGE BREAKDOWN, R. s. 24, 59

A plan administrator, within 90 days of receiving a written request from a member or spouse, must provide the following information to assist the couple in dividing the pension due to marriage breakdown:

- the date on which the member became a member and, if applicable, terminated membership,
- an estimate of the member's total benefit, calculated in accordance with section 59 of the Regulation, and
- the value of the member's additional voluntary contributions and optional ancillary contributions, if applicable, up to the date specified in the request.

4.3 - ANNUAL STATEMENTS, SOLVENCY RATIO, R. s. 14

In addition to the statement previously required to be included on Annual Statements if the plan is insolvent, the administrator must now state the solvency ratio as a percentage. The statement must also indicate that the plan's assets are insufficient to cover liabilities and confirm that special payments are being made to make the plan solvent within 5 years.

4.4 - SMEPPs: ANNUAL STATEMENT, ELIGIBILITY FOR TERMINATION OPTIONS, R. s. 14

Where a member of a Specified Multi-Employer Plan has not completed at least 350 hours of employment in the last two fiscal years, the plan must inform the member, on his or her annual statement, that he/she is eligible to exercise termination options.

4.5 - INTEREST GROSS AND NET, DC PLANS, A. s. 14(3)(d), R. s. 11(2)

If the interest rate credited to member contributions in a defined contribution account is net of transaction fees and charges, the gross rate of interest before the reduction for fees and charges must be reported on member and beneficiary statements annually and at termination, retirement, death before retirement, and plan termination.

4.6 - "FLEX PLANS" AND OACs - MEMBERS' STATEMENTS, R. s. 13, 14, 15, 16, 17, 19, 22

"Flexible pension plans" that permit members to make optional ancillary contributions (OACs) to purchase ancillary benefits have new disclosure requirements. Please see **section 5.6** below. The plan must give new members a statement of how the plan's assets are invested, how interest will be applied to the OACs, and where the method may give rise to a negative interest rate, a statement of that fact. The plan must also give new members an explanation of the ancillary benefits available for purchase, the estimated value of the maximum benefits allowable at pensionable age, and a statement explaining the risk of forfeiture due to restrictions under the tax Act.

On annual, termination, death benefit, and plan termination statements, OACs are to be dealt with as a separate category of contributions including separate accounting of interest accrued. At retirement, the member statement is to include the selection of ancillary benefits available for purchase, and if his contributions exceed the maximum value of benefits available for purchase, the amount of the excess and the fact that the excess is retained in the plan.

4.7 - AUDITED FINANCIAL STATEMENTS, A. s. 15(4)(f), R. s. 25 (1)(b)

Specified Multi-Employer Plans and Multi-Unit Pension Plans must make available to members and their agents for inspection the three most recent Audited Financial statements.

4.8 - NOTIFICATION OF ADVERSE AMENDMENTS, R. s. 12

If an amendment to a pension plan adversely affects the rights of a member or any other person entitled to benefits, and if the Superintendent requires the administrator to do so, the administrator must provide an explanation to the affected persons within 14 days of being notified in writing by the Superintendent that the explanation is required. Please see **section 2.8** above.

4.9 - SIPP REPLACEMENT FOR DC PLANS, R. s. 51(4)

A plan permitting member-directed investments in a defined contribution provision must provide to the member a statement containing sufficient investment options to enable members to make prudent investment choices, and sufficient information to enable members to make informed investment decisions. This statement replaces the Statement of Investment Policies and Procedures (SIPP) for plans consisting solely of member-directed investments in defined contribution accounts, but plans containing other defined contribution or defined benefit provisions must also have a SIPP (see also **section 3.2** above).

4.10 - DISCLOSURE FOR PHASED IN RETIREMENT CASES, A. s. 47, R. s. 23

See also **section 5.7** below. If a plan offers phased-in retirement, as permitted under section 47 of the Act, the administrator must give a member entering into such an arrangement a statement showing the amount of pension the member could expect to receive without any withdrawals under the phased-in retirement arrangement, the maximum lump sum withdrawal the member is permitted to make and the amount of pension payable after the withdrawal of the maximum amount. The statement must be given to the member within 60 days of the member's entering into a phased-in retirement agreement, and annually thereafter.

5. SPECIAL CIRCUMSTANCES

5.1 - PSIs - FUNDING, SUSPENSION, TERMINATION, PORTABILITY, A. s. 48, 70, R. s. 16 (1)(n)

Plans for Specified Individuals (see definition and other information in **section 2.1** above) will be subject to relaxed compliance requirements, but they must, nonetheless, follow the EPPA's funding and benefit standards, except to the extent that restrictions apply under the *Income Tax Act*. The plan's administrator must have regular actuarial valuations performed but need not file them. Unlike all other pension plans, the plan need not be wound up if contributions cease to be made or if the sole member or all the members retire. However, the plan must give the member or members the option to have an annuity purchased rather than having the pension paid from the plan.

5.2 - PENSION DIVISION ON MARRIAGE BREAKDOWN, A Part 4, R Part 4, R. s. 24, 42

For the first time, the legislation sets standards with respect to pension division on marriage breakdown. Please see **section 4.2** above for disclosure rules. Previously, the Act made any person's right to receive a

benefit subject to a Matrimonial Property Order. Most of the detailed rules are in the Regulation. Highlights of the new provisions, in the Act and Regulation, are:

- A (non-member) spouse has a right to have his or her entitlement transferred out of the pension plan, LIRA or Retirement Income Arrangement, at the time of the divorce rather than having to wait until the member receives a pension or other benefit. Spouses are subject to the same locking in rules as plan members.
- The plan must allow the spouse to transfer his/her entitlements at the time of marriage breakdown. This is the only option that the Act requires the plan to allow unless the pension is already being paid or the member is within 10 years of normal retirement age. If the pension is already in pay, it is divided. The plan may permit the spouse to leave his/her share of the benefits in the plan and be treated as a quasi-member. If the member is within 10 years of normal retirement age, the spouse must be given the option of delaying the division until the member receives a benefit.
- The spouse's share is limited to 50% of the value of the benefit earned during marriage. Additional voluntary contributions and contributions to flexible pension plans (optional ancillary contributions) are not included in this limit, and may be dealt with in any manner the Court or the spouses wish.
- For the purposes of splitting the pension benefits on divorce, where the pension is not yet being paid, the pension is valued as if the member had terminated employment on the date in question with that value based on the assumption a pension would commence at the plan's normal pensionable age.
- Pension plan administrators may charge the couple a fee for the division, of up to $150 for a DC plan, $500 for a DB plan, and $650 for a hybrid DB/DC plan. The plan administrator may also go to court at the couple's expense to have a Matrimonial Property Order clarified.

5.3 - PLAN TERMINATION - SOLVENCY DEFICIENCIES,
A. s. 73, R. s. 48, 55,63

An employer who terminates his pension plan with an outstanding solvency deficiency as revealed in the termination valuation must pay off that deficiency within the five-year period following the termination, following the usual rules for paying off deficiencies. Annual information returns must continue to be filed until the solvency deficiency is paid off, at which point the members and former members are paid the remainder of their benefits and the plan is wound up. The same applies where there is a solvency deficiency in a multi-unit plan. That employer is responsible for continuing to pay off the deficiency attributable to his employees' and former employees' benefit entitlements.

5.4 - MERGER AND SUCCESSOR PLANS, A. s. 80, R. s. 65

The rules applicable where members of a pension plan are affected by a business merger or other transaction are clarified. The following possible scenarios are addressed:

- if the plan members will not be members of a pension plan after the business transaction, the plan of which they were members must be terminated or partially terminated with respect to those employees, and they have all the rights associated with a plan termination;
- if the pension plan continues to operate, but with a different employer/administrator due to a business merger, sale or takeover, the plan is considered to continue, but with an amendment required to change the name of the administrator to that of the new employer
- if the members of the plan will become members of another pension plan due to the business transaction, the assets and liabilities of the predecessor plan may be merged with those of the successor plan, or the predecessor plan or the portion of the predecessor plan relating to the transferring employees may continue to be operated by the new employer as an inactive plan.

In all cases where the affected employees continue to be members of a pension plan, a break in employment is deemed not to have occurred and they must be considered to have been continuously employed for the purposes of determining eligibility for membership, vesting and locking-in status in both plans.

If there is a subsequent termination of the successor plan, where an inactive predecessor plan exists, the successor plan's surplus assets, if any, must be used to discharge any outstanding liabilities of the predecessor plan before being distributed according to the rules of the plan.

5.5 - CONVERSIONS - 50% TEST, R. s. 34

New rules clarify how the "50% test" is to be applied where the plan has been converted from a defined benefit to a defined contribution plan. If the plan conversion applies only to service from the date of the conversion and onward, the 50% test is not applied until the member terminates, retires or dies or until the defined benefit provision is terminated. If the conversion applies to all service accrued under the defined benefit provision, the test must be applied at the date of the conversion and the member must have the options set out in section 37 of the Act with respect to the excess contributions.

5.6 - FLEX PLANS AND OACs, A. s. 35(3), 37(6), 36(4), R. s. 33

See also **section 4.6** above. The Act and Regulation now accommodate "flexible pension plans" by adding a new category of member contribution to a defined benefit plan, optional ancillary contributions (OACs). These contributions are used by the member to purchase optional ancillary benefits at retirement. Special rules apply. OACs are not locked in for portability purposes, and are not subject to the

50% test set out in section 37 of the Act. Interest must be credited to these contributions at the fund rate.

5.7 - PHASED-IN RETIREMENT, A. s. 47, R. s. 23, 47

The Act now permits a plan to offer "phased-in retirement" to members. If a plan member who is within 10 years of normal retirement age has an agreement with his employer to "phase in" retirement by working reduced hours, he may apply annually to withdraw a lump sum from his pension plan to compensate partially for the lost income. He will continue to earn benefits under the plan, and his eventual pension will be adjusted to reflect both the withdrawn amounts and the service earned while working reduced hours. The maximum lump sum that may be withdrawn is set out in section 47 of the Regulation as well as the rules for adjusting the member's pension to reflect the withdrawn sums. See also **section 4.10** above.

5.8 - DIRECTIONS FOR COMPLIANCE, A. s. 8

The Superintendent is given the power to issue orders ("directions for compliance") if a plan is not being administered in compliance with the Act, or is being administered in a manner contrary to safe and sound pension administration practices. An administrator has a right to question a direction for compliance, but must act on it within 60 days unless the Superintendent varies or revokes that direction. If the Superintendent considers that it is in the best interest of plan members and other beneficiaries to require earlier action, the Superintendent may order immediate compliance after the direction is issued. If an administrator does not comply, the Superintendent may cancel the plan's registration or apply to the Court for an Order.

5.9 - CONSENT FOR WITHDRAWAL OF SURPLUS, A. s. 83, R. s. 67

An employer who does not have the right to withdraw surplus or excess assets under the terms of the plan may establish a claim to a one-time withdrawal by obtaining the consent of:

- 2/3 of plan members and
- 2/3 of former members, spouses of deceased members and former members (who are defined in the Act as deferred vested members and pensioners), and spouses entitled to benefits as a result of a pension division on marriage breakdown.

In seeking consent the administrator must notify members and former members, and any union representing members, of the proposed withdrawal at least 90 days but not more than 180 days before submitting a request to the Superintendent for consent to the withdrawal. The administrator must also inform the persons from whom the consent was sought as to the outcome of the proposal. The administrator must also file with the Superintendent a copy of the notice sent to members and a statement that the notice has been provided to members.

For more information please contact:

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