

## POOLED REGISTERED PENSION PLANS (PRPPs)

In December 2010, the federal government first proposed the creation of the PRPP. PRPPs are intended to provide a new, large-scale and low-cost defined contribution (DC) pension option to employers, employees and the self-employed. In November 2011, the federal government introduced [Bill C-25](#), the *Pooled Registered Pension Plans Act* (PRPP Act), which sets out the legal framework for the establishment and administration of PRPPs applicable to federally regulated employees and employers. A package of draft legislative proposals for the *Income Tax Act* (Canada) (ITA) regarding PRPPs was also released for consultation in December 2011. The proposed tax rules will apply to both federally and provincially regulated PRPPs and will permit the introduction of provincial legislation required to implement PRPPs beyond the federal PRPP Act. In 2012, following the enactment of the proposed tax rules, we expect to see numerous provinces, including Ontario, enact legislation to implement PRPPs. At this time, only the Quebec government has formally proposed amendments to its legislative and regulatory frameworks to create voluntary retirement savings plans based on the framework for PRPPs.

## PENSION REFORM

**Ontario:** A significant number of the amendments to the Ontario *Pension Benefits Act* (PBA) introduced under [Bill 236](#) and [Bill 120](#) have not yet been proclaimed into force, including amendments eliminating partial wind-ups, implementing immediate vesting, addressing the transfer of surplus in corporate transactions and introducing phased retirement. The corresponding PBA regulations to Bill 236 and Bill 120 have also not been released. We anticipate that these regulations will be released in 2012, and at the same time, the amendments to the PBA introduced under Bill 236 and Bill 120 will be proclaimed into force. Of note for employers is the amendment made to the PBA regulations in March 2011 to mirror changes to the federal pension investment rules eliminating quantitative restrictions on real property and Canadian resource property investments.

## SOLVENCY-FUNDING RELIEF FOR JOINTLY SPONSORED PENSION PLANS (JSPPs)

Effective June 1, 2011, certain stipulated JSPPs may specify a zero or "nil" solvency deficiency for a valuation date that falls on or after December 31, 2010. Essentially, this means that such JSPPs no longer require funding on a solvency basis, provided they comply with various restrictions imposed in the new regulation.

## SOLVENCY-FUNDING RELIEF FOR SINGLE-EMPLOYER PUBLIC-SECTOR PENSION PLANS

A new solvency-funding relief regime was implemented for stipulated public-sector single-employer defined benefit (DB) or hybrid plans largely in the university sector. The new regime replaces the optional forms of solvency relief otherwise provided under the PBA regulations and provides temporary funding relief in two stages, with specific criteria attached to each stage. Substantial progress must be made in stage one in order for the pension plan to be eligible for the further funding relief available in stage two. If substantial progress is not made in stage one, the normal funding rules under the PBA regulations will be applicable.

**Federal:** Numerous amendments to the *Pension Benefits Standards Act, 1985* (PBSA) introduced in 2010 were proclaimed into force in 2011, including provisions which permit the use of letters of credit to satisfy solvency payments, require full funding on plan termination, prohibit plan amendments which cause the solvency ratio to fall below 0.85, and implement immediate vesting. Other amendments to the PBSA in 2010 remain unproclaimed, including the creation of a limited form of "safe harbour" for member-directed DC plan investments. The federal jurisdiction is currently the only Canadian pension jurisdiction to propose any form of "safe harbour" and we are hopeful that other provinces will provide similar relief for employers.

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**Nova Scotia:** On November 15, 2011, the Nova Scotia government released Bill 96, Pension Benefits Act, which repeals and replaces the current act. Following the enactment of Bill 96, Nova Scotia's pension regime will closely follow the pension regime in Ontario. Bill 96 is based on the final report of the Pension Review Panel on private-sector pension plans published in 2009 and the subsequent discussion paper released by the Nova Scotia government in 2010 based on the final report.

### MULTI-JURISDICTIONAL PENSION PLANS

In May 2011, the Canadian Association of Pension Supervisory Authorities (CAPSA) published the final version of the Agreement Respecting Multi-Jurisdictional Pension Plans (the Agreement). The purpose of the Agreement is to provide a clear framework for the administration and regulation of pension plans that have members in more than one Canadian pension jurisdiction. At this time, only Ontario and Quebec have entered into the Agreement meaning that the administration of Ontario and Quebec registered pension plans with members in both jurisdictions is subject to the Agreement. The Alberta, Manitoba and New Brunswick pension statutes and the PBSA have been amended to enable their respective governments to enter into the Agreement.

### RE INDALEX

On December 1, 2011, the Supreme Court of Canada (SCC) granted leave to appeal from the April 7, 2011 decision of the Ontario Court of Appeal (OCA) in Re Indalex. The OCA held that the deemed trust created under the PBA secured an employer's obligation to fund the entire wind-up deficiency of a wound-up pension plan. This was a surprising conclusion given that previous jurisprudence, including a 2006 decision of the OCA, had determined the PBA only gives priority for the amount of contributions to a wound-up pension plan that are due but not paid (i.e., normal course contributions and special contributions). The OCA further held that, as the remedy for certain breaches of fiduciary duty by Indalex to the plan beneficiaries, a constructive trust equal to the full value of the pension deficiencies was imposed over its assets in priority to the debtor-in-possession charge. It is expected that the SCC will hear the appeal sometime in late 2012 or early 2013. We anticipate that the SCC decision will

clarify the scope and application of the PBA deemed trust and provide guidance as to the fiduciary duties applicable to a pension plan sponsor and administrator in the context of a proceeding under the Companies' Creditors Arrangement Act and the appropriateness of a constructive trust remedy in these circumstances.

### CANADIAN ASSOCIATION OF PENSION SUPERVISORY AUTHORITIES (CAPSA) GUIDELINES

On November 15, 2011, CAPSA released Guideline No. 6 Pension Plan Prudent Investment Practices Guideline, including a companion Self-Assessment Questionnaire on Prudent Investment Practices, and Guideline No. 7 Pension Plan Funding Policy Guideline. By releasing Guideline No. 6 and Guideline No. 7, CAPSA has provided reference tools for pension plan sponsors and administrators, particularly in the case of single-employer pension plans. Guideline No. 6 is applicable to both DB and DC plans and provides guidance for demonstrating prudence in the investment of pension plan assets. Guideline No. 7 is applicable to DB plans and outlines the general principles and objectives of pension plan funding, the purpose of establishing a funding policy and the individual roles of the sponsor and the administrator. Importantly, Guideline No. 7 states that a plan sponsor is not held to a fiduciary standard of care when establishing a funding policy.

### CHANGES TO CANADA PENSION PLAN (CPP)

Significant changes to the CPP came into effect on January 1, 2012 to reflect the way Canadians are living, working and retiring. The changes affect both employees and self-employed workers aged 60 to 70. The changes do not affect individuals who are already receiving a CPP or Quebec Pension Plan (QPP) retirement pension and remain out of the workforce. Employees working in Quebec and other workers not subject to the CPP are also not affected by these changes. The changes to the CPP include: (i) all workers aged 60 to 65 will be required to make CPP contributions even if they are receiving a CPP or QPP retirement pension; and (ii) workers who are 65 to 70 years of age and who are receiving a CPP or QPP retirement pension will be required to contribute unless they have elected to stop their CPP contributions.