
NEW PENSION PLANNING OPPORTUNITIES FOR CHARITIES AND NOT-FOR-PROFITS

*By Richard E. Johnston**

A. INTRODUCTION

Proposed changes to the Ontario *Pension Benefits Act* (PBA) were introduced on October 19, 2010 under Bill 120.¹ A small change that could be easily missed offers a new pension planning opportunity for any related group of charities and not-for-profits, making it simpler for the related companies to participate in a single registered pension plan.

B. CORPORATE GROUPS

Businesses often establish subsidiaries or affiliates for good commercial reasons. Recently, more and more charities and not-for-profits have established related companies. Separate legal entities are often prudent in order to protect endowments and other assets against claims that may arise from activities within a particular branch of the organization.

For example, a charity operating a summer camp might wish to have one entity operate the camp, while putting endowments in a separate entity and ownership of the real property in another entity. Each of the three companies may have its own employees. If all three companies wish to allow their employees to participate in a registered pension plan, it would be simplest and least expensive to have one pension plan for employees of all three companies.

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¹ The proposed change discussed here may be found in subsection 1(10) of Bill 120 at http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&Intranet=&BillID=2418.

C. PENSION PLANS FOR CORPORATE GROUPS

If a group of affiliated business corporations participate in a single pension plan, that plan will not be considered to be a multi-employer pension plan (MEPP) for purposes of the PBA. This exemption from MEPP status benefits employees, since members of MEPPs do not have the benefit of the Pension Benefits Guarantee Fund. The Pension Benefits Guarantee Fund pays minimum guaranteed pension benefits in certain situations where the pension plan is not able to pay the promised pension benefits in full. As well, the PBA imposes different governance requirements for MEPPs than for single-employer plans.

To date, the PBA exemption from MEPP status for affiliated companies has used the definition of “affiliate” contained in the Ontario *Business Corporations Act*. That definition is based on control through the holding of voting securities, so it has not applied to related non-share companies. Hence related groups of charities and not-for-profit companies have been required to either establish a separate pension plan for each employer, establish a MEPP or find an alternative to a registered pension plan.

D. PROPOSED AMENDMENTS TO PBA

Bill 120 will extend the exemption from MEPP status to pension plans where all of the participating employers are affiliates within the meaning of the *Business Corporations Act* or the *Not-for-Profit Corporations Act, 2010*.

The *Not-for-Profit Corporations Act, 2010* was enacted on October 25, 2010, although it is not yet in force. The definition of “affiliate” in the *Not-for-Profit Corporations Act, 2010* tracks the definition of “affiliate” in the Ontario *Business Corporations Act* in substance, except that control may be by way of votes attached to shares or memberships.

For example, if a parent charity or not-for-profit controls two subsidiaries through voting memberships, all three companies will be “affiliates” under the *Not-for-Profit Corporations Act, 2010*. Under the proposed changes to the PBA, employees of all three companies could participate in a single pension plan without the plan being a MEPP.

The same result has been theoretically possible since amendments to the PBA were made in 2007 that allowed exempting regulations to be made for pension plans with multiple participating employers.

However, obtaining a regulation is not a quick or simple procedure. In fact, no such exempting regulation has ever been made.

As a result of the change to the PBA, it will be easier and less expensive to allow employees of several related charities to participate in a single pension plan, while still allowing employees the protection offered by the Pension Benefits Guarantee Fund.

Note that the changes to the PBA proposed under Bill 120 are not yet law. This particular change is not likely to be controversial, but it will not take effect until Bill 120 is passed and proclaimed in force.

This article is based on a Fasken Martineau Pensions and Benefits Bulletin that can be found at <http://www.fasken.com/en/new-pension-planning-opportunities-for-charities-and-not-for-profits/>.