# 9. Pension & Employee Benefit Plans

All but one Canadian province subscribe to a federally administered pension plan, the Canada Pension Plan. The province of Québec provides a similar pension plan, the Québec Pension Plan, for employees and the self-employed in that province. In addition, many large employers opt to provide their employees with company-sponsored pension and benefit plans.

## Pensions

### Government-Sponsored Pension Plans

Both employers and employees are required to contribute to the Canada Pension Plan (CPP), or to the comparable Québec Pension Plan (QPP). These plans provide a basic level of income protection on retirement or disability and are financed by contributions deducted each time an employee is paid. The employer and employee each contribute an equal percentage of salary, up to a yearly maximum. Employees generally become eligible for full benefits at age 65, even if they are still working. The pension may be received as early as age 60 or deferred to as late as age 70. Contributions cannot be made after age 70.

Old Age Security and the Guaranteed Income Supplement are also available to lower-income pensioners. The funding for these programs is derived from the federal government's general tax revenues, not employers or employees.

### Company-Sponsored Pension Plans

Many employers provide company pension plans, which may be partially funded by employee contributions. Though private pension plans are not mandatory, if offered, they must be funded according to provincial law (or federal law for those employees who work in the federal jurisdiction).

Most such plans are registered under the Income Tax Act as a "registered pension plan" in order to benefit from favourable tax treatment. In order for a pension plan to be registered for tax purposes, it must also be registered under the pension standards legislation of the appropriate jurisdiction. If the plan members are employed in more than one Canadian jurisdiction, then the minimum standards of each province must be upheld (subject to the sole application of the law of the province in which the plan is registered for certain issues). Employers are always free to provide benefits that go beyond the minimum required by the jurisdiction of employment provided that the tax limits on maximum benefits are respected.

Pension standards legislation is designed to ensure that adequate funds will be available to pay the pension obligations in the future. Eligibility to participate in a pension plan applies to both part-time and full-time employees.

## Group Benefit Plans

Although the federal and provincial governments provide a variety of insurance and benefit plans as discussed in this chapter and Chapter 10, many employers provide additional employee benefit plans. Often, employers will provide supplemental health, dental, drug, disability, and/or life insurance.

Fewer employers today are providing benefit plans to retirees. In industries where this is still the norm, the trend is to have retirees pay premiums for their benefits after retirement.

## Purchaser’s Strategic Considerations

### Unionized Environments

A collectively negotiated pension plan can create complications for a purchaser in two ways. First, the collective agreement may restrict or limit the purchaser’s ability to modify the terms of the pension plan without union consent. That can be particularly problematic in the case of a distressed target acquisition, where a union will likely be more vigilant with regard to the pension benefits of employees who may be downsized or laid-off.

Second, the collective agreement may require that employees participate in a pension plan that is administered by the union, i.e., a multi-employer pension plan. As a result, the purchaser may be forced to make contributions to a plan over which it has little or no control. Only the province of Québec has legislation concerning an employer’s liability in withdrawal from a pension plan. The law in other provinces is relatively undeveloped.

### Due Diligence Process

Before completing a share purchase or an asset purchase in which the pension and benefit plans are assigned to the purchaser, the purchaser will need to obtain copies of any relevant pension and benefit plan documentation. Three main issues need to be considered at this stage:

- Compliance
- Funding
- Maintenance post-acquisition

## Asset Vs. Share Purchase

As the legal personality of the target does not change in a share purchase, the pension plan continues as it was prior to the acquisition. If the parent company maintains a pension plan for its subsidiaries and only the shares of the subsidiary are purchased, the purchaser will need to provide its own plan.

Asset purchases provide a certain degree of flexibility with regard to pension plans. However, some purchasers will opt to grant the same or substantially similar plans to the employees following the asset purchase to avoid claims of constructive dismissal.

The purchaser in an asset purchase may decide to:

- Assume the seller’s plan if it is limited to only its employees
- Provide a new plan on a going-forward basis for future service exclusively
- Provide a comprehensive plan covering both past and future service

Where the purchaser decides to provide a plan that covers past and future service, the assets of the seller's plan will need to be transferred to the purchaser's plan to cover liabilities that were assumed from the seller's plan. Regulatory consent to the transfer of assets between pension plans must be obtained before any such assets are transferred. Some legislative restrictions in certain jurisdictions may prevent a perfect match between value of assets and liabilities that are transferred from the seller's pension plan, i.e., the transferred assets might be more or less than the value of the transferred liabilities. If the value of the assets in the seller's pension plan exceeds the value of the liabilities, the seller will wish to be compensated for the difference. If, on the other hand, the liabilities are greater than the value of the assets of the seller's pension plan, the purchaser will require a corresponding reduction in its final offering price.

## Timing

Changes to existing plans or the creation of new pension plans require registration by applicable regulators. Such changes may involve the preparation of new plan documentation, as well as insurance contracts or trust agreements, particularly if the purchaser is required to establish a new plan. It is common for the purchaser to complete this work after the transaction has closed using the closing as the effective date of commencement of the plan.

Because group benefit plans are typically governed by an underlying insurance contract, if purchaser is required to provide a new plan, such plan must generally be operational effective as of the closing date.