Ontario Consults on Elimination of 30 Per Cent Corporate Control Limit

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The Ontario Ministry of Finance recently completed its request for submissions in connection with the proposed amendment to Regulation 909 under the *Pension Benefits Act* (Ontario) (PBA), to eliminate the 30 per cent corporate control restriction applicable to Ontario registered pension plans.[1]

The restriction contained in Schedule III to the *Pension Benefits Standards Regulations, 1985* (Canada) (Schedule III), which has been incorporated into the local pension legislation of most provinces of Canada including Ontario, prohibits the administrator of a pension plan from directly or indirectly investing the moneys of the pension fund in securities of a corporation to which are attached more than 30 per cent of the votes that may be cast to elect the directors of the corporation.[2] Investments in "investment corporations", "real estate corporations" or "resource corporations" are not subject to this limit[3] provided the corporation deposits the required undertaking with the regulator.

Ontario's proposed change would mean that a pension plan administrator would no longer be prevented from investing moneys of the plan in more than 30 per cent of the voting shares of any corporation provided that certain disclosure requirements and undertakings were made to the regulator.

The undertaking and disclosures would include,

- Filing by the corporation of its annual audited financial statements, lists of its officers, directors and shareholders, a compliance certificate and list of the corporation's assets, including securities included in those assets, and the fair value of each asset.
- Consent by the corporation to permit the Superintendent to visit the corporation's head office to examine books and records.
- At the request of the Superintendent, a privately held corporation would be required to obtain, at its own expense, an appraisal of its business by one or more accredited appraisers.
- For a corporation that, in turn, holds an investment in the securities of another corporation to which are attached more than 30 per cent of the voting securities to elect directors, that other corporation would be required to provide an undertaking to the Superintendent not to invest or hold an investment, in the securities of any other corporation.

Ontario's proposal would also prohibit certain related party investments and loans and also restrictions of those investments and loans to those authorized under the PBA.

It is not clear whether the increased disclosure and investment restrictions to investee corporations will help or hinder opening up of new investment opportunities for the pension sector Ontario's proposal will also depend on the Federal Liberal's own consultation process, announced in its March 22, 2016 budget. It may make more sense for Ontario to wait and see what changes to Schedule III are proposed.

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[1] Proposed Amendment to Regulation 909: Eliminating the 30 per cent rule for Pension Investment. 16-MOF007, March 14, 2016. Comments due by April 29, 2016.
[2] Schedule III, s.11(1)
[3] Schedule III, s.11(2)