

Prudent Investor Legislative Provisions Update – Third

October 11, 2017

By Heather Douglas

On Monday, October 10, 2017 the Ministry of Municipal Affairs posted on Ontario's Regulatory Registry a summary of proposed regulatory changes under the *Municipal Act, 2001* and the *City of Toronto Act, 2006*.

A summary of the proposed changes as set out on the website follows:

Prudent Investor Standard [Note: the relevant sections of the *Municipal Act, 2001*, have not yet been proclaimed in force.]

Regulatory amendments under the *Municipal Act, 2001* are proposed that set out some of the rules for eligible municipalities that decide, by by-law, to 'opt in' to the prudent investor regime. Such rules relate to the eligibility criteria, the governance framework and the concept of two or more municipalities investing together as a group. In summary, the proposed rules provide that eligible municipalities are those that have a net financial assets balance of more than \$50 million or that, jointly with one or more municipalities, have a minimum balance of \$100 million. An eligible municipality must establish an investment board (IB) that is a municipal services board and must delegate control and management (which is described as "day-to-day investing") of the municipality's investments to the IB. The municipal council must develop an investment policy that outlines the municipality's objectives for return on investment, risk tolerance, liquidity needs and other considerations. The IB would be required to adopt and maintain an investment plan that specifies how the investments would be carried out. Each year the IB would be required to prepare an annual report that would include a statement by the treasurer that the investments conform to the council's investment policy.

The IB cannot include members of council or staff (with the exception of the municipal treasurer). According to the proposed rules, a municipality can establish an IB with one or more other municipalities however, in this situation municipal treasurers cannot exceed 25% of board members. As an alternative, a municipality could pass a by-law delegating its prudent investment powers and duties to an existing investment board.

Amendments to the Prescribed List of Eligible Investments

1. the 180 days by which divestiture is required for certain rated investments in the event of a downgrade would not apply if the municipality first creates a workout plan
2. municipalities would be able to purchase and hold US\$ in connection with the purchase of goods and services from US vendors
3. municipalities would be authorized to accept donated securities that may constitute ineligible securities provided they will be converted into eligible securities
4. the credit rating threshold for authorized investment instruments issued by a Canadian bank, a loan corporation or a credit union with a term of more than 2 years would be lowered from AA- or above to A- or above
5. investments in securities issued by a credit union with a term of more than 2 years would be facilitated

Amendments re Bond Forward Agreements

Amendments to O. Reg. 653/05 of the *Municipal Act, 2001* and O. Reg. 610/06 of the *City of Toronto Act, 2006* would delete the reference to 180 days and provide that the maximum settlement date for bond forward agreements that municipalities may enter into is 365 days.

Please see the website for additional details: [website](#)

According to the website comments should be provided to John Ballantine by November 20, 2017.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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