

Blakes Bulletin

Pension & Employee Benefits

Funding Relief for Defined Benefit Pension Plans in Canada

In response to the recent decline in global financial markets, many of the pension jurisdictions in Canada have issued proposals or enacted legislation to address the decline of the funded status of defined benefit pension plans registered in their respective jurisdictions. A summary of the relief proposed or legislated in each Canadian pension jurisdiction is set out below.

FEDERAL

Under the *Pension Benefits Standards Act, 1985* (PBSA), pension plans are required to fund solvency deficiencies over a 5-year amortization period. In its November 2008 *Economic Update* (2008 Update), the federal government proposed to allow federally regulated pension plans to extend the amortization period from 5 to 10 years in respect of new solvency deficiencies as at December 31, 2008 provided that members and retirees agree to the extended amortization period or the difference between the 5- and 10-year payment schedules is secured by a letter of credit. (Based on discussions we have had with the Department of Finance, we understand that pension plans looking to take advantage of the new solvency funding relief rules would need to obtain a solvency valuation as at December 31, 2008, even if the plan was not otherwise required to file an actuarial valuation report.) If one of the two conditions is not met by the end of 2009, the plan would be required to fund the deficiency over the following 5 years.

The federal government also announced in the 2008 Update that it will be initiating a consultation process on issues facing defined benefit and defined contribution pension plans with a view to making permanent changes to the legislative framework in 2009.

On December 19, 2008, the Office of the Superintendent of Financial Institutions (OSFI) granted permission to plan sponsors to use the Canadian Institute of Actuaries (CIA) Final Standard of Practice for Pension Commuted Values (CIA Commuted Value Standard) for solvency valuations with effective dates on or after December 12, 2008, provided that the

actuarial valuation report containing the solvency valuation is filed with OSFI on or after April 1, 2009 and the pension plan in respect of which the actuarial valuation is filed was not terminated prior to April 1, 2009. Under the CIA Commuted Value Standard, a higher discount rate is used.

On January 27, 2009, the federal government tabled the 2009 budget (Budget). The Budget confirms the solvency funding relief measures proposed in the 2008 Update (as outlined in the first paragraph of this section). The Budget also announced that the current asset smoothing rules for federally regulated pension plans will be amended to increase the 110% limit on asset value smoothing. In an effort to improve pension plan member protection, the Budget suggests that the federal government will take action to make the amount of any deferral of funding that results from the use of an asset value in excess of 110% subject to a deemed trust. The Budget suggests that OSFI will be issuing detailed guidance on this subject in the near future.

Finally, the Budget indicates that the consultation process regarding defined benefit and defined contribution pension plans initiated by the federal government will be expedited. The Budget requires this consultation process to be completed within 90 days. It was originally proposed that the consultation process would begin in March 2009 and continue throughout the spring. (Please see our [January 2009 Blakes Bulletin on Pension & Employee Benefits: *Canadian Federal Minister of Finance Releases Discussion Paper on Private Pensions.*](#))

ALBERTA

The *Employment Pension Plans Act* (Alberta) (EPPA) currently requires pension plans to amortize solvency deficiencies over a period not exceeding 5 years and unfunded liabilities over a period not exceeding 15 years. Several solvency relief measures have been incorporated into the EPPA in recent years, including permitting plan sponsors to fund solvency deficiencies using a letter of credit and allowing Specified Multi-Employer Pension Plans (SMEPPs) to cease making solvency payments for a 3-year period.

CONT'D ON PAGE 2

Pension & Employee Benefits

CONT'D FROM PAGE 1

On December 18, 2008, Alberta Finance and Enterprise released a discussion paper titled *Proposed Response Alternatives to Meet the Defined Benefit Pension Plan Funding Issues Arising from the Current Economic Environment* proposing the following additional relief measures to assist sponsors of defined benefit pension plans registered under the EPPA:

- Pension plans would be permitted to use the CIA Commuted Value Standard for actuarial valuations effective from December 31, 2008.
 - An extension would be granted for all pension plans to amortize solvency deficiencies related to the market decline in 2008. This would be a one-time option applied for with the filing of a valuation done between September 1, 2008 and December 31, 2009. This proposal would require the plan to file an actuarial valuation which isolates the solvency deficiency attributable to the 2008 economic environment. The disclosed solvency deficiency would have an amortization period of 10 years (rather than the usual 5). The normal rules for amortization would apply to solvency deficiencies attributable to the time periods before and after 2008.
 - The Discussion Paper proposes a 3-year moratorium on solvency payments, similar to that currently available to SMEPPs for single employer pension plans. Under this option, the employer could stop making any solvency payments for the 3-year period. At the end of that period, a new solvency valuation would identify solvency deficiencies that would be amortized over a 5-year period. The amortization period for any going concern unfunded liabilities could not exceed 10 years. No amendments increasing liabilities would be permitted during the moratorium.
 - The existing 3-year solvency moratorium for SMEPPs that was to expire on December 31, 2008 would be extended until December 31, 2011.
- In addition to the proposed relief measures outlined above, Alberta Finance and Enterprise is proposing the following protective measures be incorporated into the EPPA:
- If a plan sponsor were to choose to use the 3-year solvency moratorium or the extended amortization period described above, this would need to be disclosed to plan members in their annual pension statements.
 - If a plan sponsor wishes to continue contribution holidays after December 31, 2008, the plan sponsor must file an actuarial valuation as at December 31, 2008 to demonstrate the pension plan continues to have excess assets.

BRITISH COLUMBIA

British Columbia announced that it will permit the early implementation of the CIA Commuted Value Standard for actuarial valuations with an effective date of December 31, 2008 or later.

Further, the British Columbia Superintendent of Pensions published a note in January 2009 titled *Guidelines for Requests for Solvency Extensions for Defined Benefit Pension Plans* which provides guidance to plan administrators who are considering making solvency extension requests pursuant to section 6 of the British Columbia *Pension Benefits Standards Act* (BC PBSA). Section 6 grants the Superintendent of Pensions discretion, upon written request from the plan administrator, to extend any time limit imposed by the BC PBSA (which will include the 5-year period to amortize the solvency deficiency of a pension plan) where the Superintendent believes there are extenuating reasons for the inability to comply with the legislated time limit. The note states the following factors will be taken into account by the Superintendent when considering a request to extend the solvency amortization period:

- Is the request for a solvency deficiency payment extension demonstrably in the best interests of the plan members?
- Is the solvency deficiency largely the result of factors beyond the control of the plan administrator?
- Would the special payments normally required to eliminate the solvency deficiency result in severe financial hardship to the plan sponsor, which can only be resolved through the solvency extension?
- Has the plan sponsor provided strong assurance of its ongoing financial viability for the period of the solvency extension?
- Does the plan administrator have a good record with respect to plan administration and regulatory filings?

CONT'D ON PAGE 3

Pension & Employee Benefits

CONT'D FROM PAGE 2

- Have all required contributions and special payments to the plan's fundholder been remitted within the regulatory deadlines?
- Has the plan administrator reviewed the form and design of its plan to ensure the benefits are affordable?

The following items must be included in the written request to extend the solvency amortization period: (i) a current actuarial valuation report; (ii) a letter from the plan administrator identifying the extenuating reasons that the plan cannot make the required solvency deficiency payments, and the period of extension to the regular amortization period that is being requested; (iii) a commitment from the plan administrator not to increase benefits during the amortization period without the consent of the Superintendent; (iv) the financial statements of the operations of the plan sponsor for the previous 3 years; (v) a letter from the plan sponsor setting out the financial prospects of the plan sponsor during the extended amortization period; and (vi) a report from the plan auditor or fundholder on the remittance of contributions over the past 3 years.

It is recommended that a plan administrator discuss its request with the Superintendent's office prior to submission. The note states that the Superintendent is unlikely to approve extended solvency amortization periods which are longer than 15 years. Finally, if a plan is granted an extension, the administrator will be required to disclose details of the extension to all plan members.

MANITOBA

On December 22, 2008, Manitoba enacted the *Special Payments Relief Regulation* MR 190/2008 (Relief Regulation). The stated purpose of the Relief Regulation is to give plan sponsors more flexibility in managing the solvency funding of their pension plans while continuing to safeguard the rights of plan members to the benefits promised under the plan. The Relief Regulation came into force on December 31, 2008. The relief measures provided in the Relief Regulation will be available to plan sponsors with up-to-date funding requirements, and only in respect of the first valuation report filed before January 2, 2011. Subject to narrow exceptions relating to plan mergers and plan splits, the Relief Regulation does not apply to new plans established after 2008.

Under the existing Manitoba pension legislation, solvency deficiencies are required to be amortized over a 5-year period. Under the Relief Regulation, plan sponsors will be permitted to elect to consolidate all solvency deficiencies under the plan, and the consolidated solvency deficiency may be amortized over a 10-year period. This extended amortization period will require buy-in from plan members and beneficiaries. Specifically, a written notice is required to be provided to members and other beneficiaries of the plan and if more than one-third of the members and former members of the plan or more than one-third of the retirees or other beneficiaries of the plan object to the extended amortization period, approval by the Superintendent will not be granted.

In the case of a Multi-Unit Pension Plan, the plan administrator must provide written notice of its intent to use the extended amortization period in accordance with the Relief Regulation to each participating employer.

While the election remains in effect, the plan cannot be amended to increase benefits if it were to affect the cost of benefits or the solvency or funding of the plan or would create an unfunded liability, unless sufficient contributions have been made to fully fund the cost of those benefits, or decrease employee contributions.

NEW BRUNSWICK

To date, the New Brunswick Department of Finance has indicated that it is not presently contemplating introducing any solvency funding relief measures for defined benefit pension plans as a result of the current economic downturn. The current New Brunswick pension legislation permits a plan sponsor to extend the solvency amortization period for a pension plan to a date on or before December 31, 2018 with the consent of the Superintendent. Among other requirements, the New Brunswick legislation requires the plan sponsor to provide notice to the plan members of its request to the Superintendent with an explanation for the request and a request that any comments or questions regarding the sponsor's request be submitted to the plan sponsor and the Superintendent. Any relief granted at the Superintendent's discretion imposes a continuing obligation on the plan sponsor to notify the Superintendent if it is at risk of not making a required special payment. There are also special relief provisions for sponsors who are New Brunswick municipalities and universities.

CONT'D ON PAGE 4

Pension & Employee Benefits

CONT'D FROM PAGE 3

NEWFOUNDLAND AND LABRADOR

Newfoundland and Labrador has indicated that it is not presently contemplating introducing any new solvency funding relief measures for defined benefit pension plans as a result of the current economic downturn. However, in June 2008, the Government of Newfoundland and Labrador amended the *Pension Benefits Act Regulations* to provide the following temporary solvency funding relief measures for defined benefit pension plans:

- Plan sponsors are permitted to consolidate previous solvency funding payment schedules and amortize the entire solvency deficiency over a single, new 5-year period.
- The solvency amortization period may be extended from 5 years to 10 years where no more than one-third of the active plan members or non-active members and beneficiaries, including retirees, object to the extended amortization period.
- The solvency amortization period may be extended from 5 years to 10 years where the difference between the 5- and 10-year level of payments is secured by a letter of credit.

The temporary solvency relief measures outlined above are available to plan sponsors who file an actuarial valuation dated between January 1, 2007 and January 1, 2009.

For multi-employer pension plans, a 3-year solvency funding exemption option has been provided for. This option is available for actuarial valuations completed between December 31, 2007 and December 31, 2010.

NOVA SCOTIA

Nova Scotia has indicated that it is not presently contemplating introducing any new solvency funding relief measures for defined benefit pension plans as a result of the current economic downturn. In the last several years, however, Nova Scotia has implemented the following 3 general exceptions to the rule that solvency deficiencies must be funded over a 5-year period.

- The Regulations under the Nova Scotia *Pension Benefits Act* (Nova Scotia Regulations) were amended in 2005 to provide universities with temporary funding relief. Specifically, universities are allowed a time extension to pay back any solvency deficiencies over

15 years as opposed to 5. This extension applies only to solvency deficiencies that arose prior to January 1, 2006. If there is a partial wind-up of a university plan, due to outsourcing a particular service or terminating a program, immediate and full funding of the benefits payable in respect of those employees is required. The original solvency funding rules would apply to any subsequent solvency deficiencies which would have to be funded within 5 years.

- The Nova Scotia Regulations were also amended to provide for a 3-year exemption from solvency funding for specified multi-employer pension plans that perform valuations prior to November 1, 2010. Because of these changes, eligible specified multi-employer pension plans do not have to make an immediate reduction in accrued benefits to meet the solvency funding requirements.
- Finally, Nova Scotia has responded to some concerns around solvency funding requirements for municipalities. Effective November 27, 2006, the Nova Scotia Regulations were amended with respect to the funding of solvency deficiencies in pension plans sponsored by Nova Scotia municipalities. If a municipal pension plan has a solvency deficiency that arose between August 30, 2006 and August 30, 2016, the plan is no longer required to pay off the full deficiency within 5 years. Instead, there is only an obligation to fund to 85% solvency within 5 years. If a municipality taking advantage of this relief amends its plan and the plan's funding is negatively affected, the full cost of the amendment must be paid at the time the amendment becomes effective. In the event the plan is partially wound-up, all solvency deficiencies with respect to the partial wind-up must be paid immediately.

On January 27, 2009, the Nova Scotia Pension Review Panel (Panel) released its final report. The Panel proposed an extension of the normal 5-year solvency funding rules that would allow plan sponsors a maximum of 10 years from their next valuation date to amortize any solvency deficits. The Panel did not address whether member approval or notice would be required in respect of this extension. It is also unclear whether these measures would be temporary or permanent. In addition, the Panel made several recommendations concerning the preparation of solvency valuations in general. It remains to be seen whether some or all of these proposals will be enacted into legislation.

CONT'D ON PAGE 5

Pension & Employee Benefits

CONT'D FROM PAGE 4

ONTARIO

Under the Ontario *Pension Benefits Act*, the general rule is that a solvency deficiency of a pension plan must be amortized within a maximum of 5 years. On December 16, 2008, the Ontario government announced that it will introduce legislation this spring to provide pension plans with solvency funding relief, primarily through an extension of solvency amortization periods to 10 years with the consent of active members or their collective bargaining agent and retired plan members. The legislation would be retroactive to September 30, 2008 if passed.

The announcement also stated that the Ontario government would be looking for approval to provide the following relief measures to the sponsors of defined benefit pension plans:

- The consolidation of previous funding schedules.
- One year deferral of the start of catch-up payments required on the filing of valuation reports until the beginning of the next fiscal year, in the same manner as jointly sponsored pension plans.
- Permitting greater flexibility in the use of actuarial gains to reduce annual cash payments by plan sponsors.
- Adopting the revised CIA Commuted Value Standard.

There were also additional protections for the members of defined benefit pension plans in the announcement which were said to be under consideration:

- Enhanced notice to active and retired plan members.
- Accelerated funding of benefit improvements.
- Temporary limitations going-forward on contribution holidays where the plan actuary indicates the plan is no longer in a surplus position.

Please click [here](#) to see our Regulatory Round-up which also contains a discussion of the solvency funding relief measures proposed by the Ontario Ministry of Finance.

QUEBEC

Early in January 2009, the National Assembly of Quebec introduced legislation (Relief Act) intended to reduce the effects of the current financial crisis on Quebec registered pension plans. The Relief Act was quickly passed and received Royal Assent on January 15, 2009.

The Relief Act amends the *Supplemental Pension Plans Act* (SPPA) to provide alternative methods for the payment of benefits to certain members and beneficiaries of a pension plan who are eligible to retire or in receipt of a pension in circumstances where there are insufficient assets following the termination of their plan (between December 30, 2008 and January 1, 2012) as a consequence of their employer's bankruptcy or, in the case of a multi-employer pension plan, following the withdrawal of their employer from the multi-employer pension plan by reason of the bankruptcy or insolvency of that employer.

In such circumstances, the Relief Act permits retirees and members who are eligible to retire to transfer administration and control over investment of the plan assets corresponding to the reduced value of their pension benefits to the Régie des rentes du Québec (Régie). In managing the transferred assets, the Régie shall exercise the same powers in respect of the transferred assets as were previously exercised by the pension committee for the plan, including the investment of the transferred assets in accordance with the investment policy established by the Régie. The pension committee for the plan, or the person or body to which such powers have been delegated or granted, will be disqualified from exercising any powers in respect of the reduced pension assets transferred to, and administered by, the Régie.

The expenses incurred by the Régie to administer the reduced pension plan assets transferred to it under the Relief Act are payable from the transferred pension plan assets. However, under the Relief Act, the Quebec government may also provide supplementary funds to the Régie to cover such administrative expenses.

The Régie must have an insurer guarantee the pensions it pays to members and beneficiaries who elect to transfer assets to the Régie within 5 years of the assumption of such benefits by the Régie. The amount of the pensions guaranteed by the insurer must be at least equal to the reduced pensions that would have been payable following the termination of the pension plan, calculated on the assumption that the plan's assets had been increased, on the date of termination, by an amount equal to the difference between the contributions required under the SPPA without consider-

CONT'D ON PAGE 6

CONT'D FROM PAGE 5

ing any funding relief measures. Contrary to initial media reports, the Relief Act does not guarantee the solvency of Quebec registered pension plans. However, if the assets of a plan administered by the Régie are insufficient to pay the pensions as required or to have them guaranteed, or to pay any required expenses related to the administration of the plan by the Régie, the Government of Quebec will pay the required sums to the Régie out of the province's consolidated revenue fund.

Similarly, the Relief Act permits (but does not require) the Régie to improve the pension benefits paid to retirees whose reduced pension assets have been transferred to the Régie under the Relief Act. The Quebec government is expected to pass further legislation setting out the terms and conditions for the improvement to pension benefits by the Régie.

The Relief Act also provides for the use of the CIA Commuted Value Standard for actuarial valuations with an effective date of December 31, 2008 or later. The CIA Commuted Value Standard may also be used to determine transfer values after April 1, 2009.

The Relief Act will facilitate new Regulations that have not yet been circulated by the Régie or the Government of Quebec. The Quebec Minister of Finance has suggested that such new Regulations may:

- extend the maximum time period to amortize the solvency deficiency of a pension plan from the current 5 years to 10 years;
- permit plan sponsors to consolidate all solvency deficiencies as at December 31, 2008 for purposes of any 10-year amortization period that may be implemented; and,
- permit asset smoothing over a maximum period of 5 years when calculating the solvency deficiency and the unfunded liability of a pension plan.

SASKATCHEWAN

The Saskatchewan Financial Services Commission (Pensions Division) recently released a Solvency Relief Discussion Paper outlining the following two solvency relief options:

Option 1: 3-year moratorium from solvency deficiency funding

Where a plan has a solvency deficiency, the *Saskatchewan Pension Benefits Act* (SPBA) currently requires the sponsor to make equal monthly payments into the plan that are sufficient to amortize the solvency deficiency over a period not to exceed 5 years. Under the first option proposed in the Saskatchewan discussion paper, a plan sponsor would be able to elect a 3-year moratorium from funding a solvency deficiency established by an actuarial valuation with a review date no earlier than December 31, 2008, and no later than December 31, 2009. The moratorium would apply only to a new solvency deficiency. The moratorium would relieve plan sponsors from making solvency payments in the first 3 years of the 5-year solvency amortization period.

Option 2: Extension of amortization period for solvency deficiency from 5 to 10 Years

The second option outlined in the discussion paper would allow a plan sponsor to elect an extension of the amortization period from 5 years to 10 years for a solvency deficiency established by an actuarial valuation with a review date no earlier than December 31, 2008, and no later than December 31, 2009. The extended amortization period would apply only to a "new" solvency deficiency and not to solvency deficiencies previously established.

The discussion paper suggests that any funding relief would likely be subject to additional conditions or requirements. For example, the discussion paper suggests that notice of intention to elect solvency relief must be provided by the plan sponsor to plan members and plan beneficiaries. Of particular note, the Saskatchewan Financial Services Commission suggests that if a plan terminates during the relief period, it would be important that the balance of all outstanding solvency deficiencies be fully funded over the remainder of their amortization periods. While this type of "terminal funding" requirement is found in the pension standards legislation in several other Canadian juris-

CONT'D ON PAGE 7

CONT'D FROM PAGE 6

dictions, it does not currently exist in the SPBA. Further, the discussion paper suggests that benefits provided by a plan could not be improved on or after the date one of the above-noted options was elected and during the course of the relief period, except where the benefit improvements have been previously established by contract or agreement.

We also note that the Saskatchewan Financial Services Commission has verbally confirmed that actuarial valuations with an effective date of December 31, 2008 or later may use the CIA Commuted Value Standard.

Finally, the discussion paper also notes that Saskatchewan is interested in reviewing its pension legislation. The last major reform of the SPBA took place in 1992.

For further information on the matters discussed in this bulletin, please contact any member of our [Pension & Employee Benefits Group](#).

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