



June 30, 2009

Ontario amends pension regulations

The temporary solvency funding relief for defined benefit pension plans registered in Ontario, which was promised by the Ontario government in its 2009 budget, is finally here with the filing of an amendment to the Regulation under the *Pension Benefits Act* of Ontario on June 19, 2009. The solvency relief provisions apply to most defined benefit plans, with the exception of Specified Ontario Multi-Employer Pension Plans, as they were already provided with solvency relief that extends through the period during which this new relief regulation applies.

For the most part, the text of the amendment confirms what had previously been announced. But there are a few surprises, including restrictions on the payment of commuted values for under-funded plans and the application of the relief for valuations already filed.

Below we describe the key changes that are being made and note a few issues that will need further clarification. We end with some suggested action for plan sponsors and administrators.

Solvency relief

The Regulation clarifies that the relief available to each eligible plan may be applied only once and must be applied with the first filed valuation with an effective date on or after September 30, 2008 (the solvency relief valuation). To elect the relief, a plan administrator must file a solvency relief actuarial report with the Financial Services Commission of Ontario (FSCO), with an effective date on or after September 30, 2008 and before September 30, 2011. For the plan to be eligible to use the relief, it must ensure that all of its contributions set out in previous valuation reports that were due prior to the date of the solvency relief report have been remitted.

If a report has already been filed with a valuation date on or after September 30, 2008, prior to the government's filing of the solvency funding relief amendment, the valuation report can be re-filed taking into account the relief provisions within the nine-month filing deadline. If the valuation date is between September 30, 2008 and October 31, 2008, the filing deadline has been extended to ten months. This means a valuation with an effective date of September 30, 2008 can be filed as late as July 31, 2009, and a valuation with an effective date of October 31, 2008 can be filed as late as August 31, 2009.

One or more of the following solvency relief options can be elected in a solvency relief valuation:

1. One-year deferral of new special payments

Special payments required to liquidate any new going concern unfunded liability or new solvency deficiency determined in the solvency relief report can be deferred for up to one year from the valuation date. Jointly Sponsored Pension Plans (JSPPs) are not permitted to elect Option 1 because they already can defer special payments for one year.

This option will give sponsors some reprieve from their immediate funding requirements and allows sponsors some time to plan for the infusion of cash that will be required to fund new deficiencies at the end of the one-year deferral period.

2. Consolidation of previous solvency deficiency payment schedules

Special payments for existing solvency deficiencies can be consolidated into a new five-year payment schedule that starts on the valuation date of the solvency relief report. Any special payments made based on a report already filed effective September 30, 2008 or later (i.e., before a solvency relief report is filed), that are in excess of the new consolidated special payments schedule can be used towards reducing the amount that otherwise needs to be contributed.

Depending on the amount of the solvency payments that are currently being paid, the consolidation option could provide a significant reduction in the level of payments over the next couple of years than would otherwise need to be paid. For example, if prior valuations required the plan sponsor to make special payments of \$500,000 a year for two more years and \$300,000 for four more years, the consolidated special payments would be approximately \$450,000 for five years rather than \$800,000 over the next two years and \$300,000 over the following two years.

3. Extension of the amortization period for a new solvency deficiency from five to ten years—with a certificate of consent

The period for liquidating the new solvency deficiency can be extended from five years to a maximum of ten years. However, this option can only be applied if no more than one-third of the aggregate of all eligible members and eligible former members indicate that they object to the extension within 45 days of the objection form being mailed to the plan members (or a longer period if the administrator chooses). If the administrator elects this option, a certificate of consent must be filed with FSCO within 60 days of filing the solvency relief report. The certificate of consent must specify the total number of eligible members and former members, and the number of objections, and must include a confirmation that the number of objections is no more than one-third of the total.

Eligible members and eligible former members include all members with a defined benefit entitlement under the plan, and for whom the plan administrator has not received a notice of death.

The consent for eligible members subject to collective bargaining is to be provided by the unions that represent them. All others—non-represented eligible members and eligible former members—must vote directly unless their active membership was terminated between the date of the solvency relief report and the date the information forms are sent. The consent requirements do not apply to jointly governed plans, including JSPPs and multi-employer plans.

There appears to be a glitch in the detail of this part of the regulations. While the regulations require that the present value of ten years of going concern special payments are taken into account to determine the net new solvency deficiency in the solvency relief report, they don't allow future valuations to take into account the present value of the special payments payable during the remainder of the ten-year period (unlike the federal solvency relief regulations). Hopefully, this will be fixed within the next year. If not, the extension of the solvency payments over ten years will effectively last for only one year.

With the glitch fixed, this option could provide a significant reduction in the annual amount required towards a new solvency deficiency, as the period of payment may end up to be 11 years after the valuation date.

Benefit enhancements

If solvency payment schedules are consolidated under the second option or extended under the third option, benefit enhancements made in the five years following the solvency relief report valuation date must be funded over a maximum of five years on both a solvency and going concern basis.

Disclosure to members

If the plan administrator elects to use the solvency relief, all plan members and each collective bargaining agent that represents eligible members must be notified of the election and its impact no later than 60 days after the first day a special payment determined in the solvency relief report is due. The regulations prescribe the content of the notice which must include the following information:

- The name and provincial registration number of the plan.
- The name of and the contact information for the administrator.
- The valuation date of the solvency relief report.
- A description of the option or options elected.

- The transfer ratio of the plan as of the valuation date.
- The estimated annual contributions that would have been required to fund the normal cost of the plan and all special payments if no election had been made and the estimated annual contributions that are required after the election.
- An explanation of how the security of the pension benefits and ancillary benefits for eligible members and eligible former members might be affected as a result of the election.
- If applicable, information on whether the bargaining agent objected to Option 3 and confirmation that no more than one-third of members objected.

In addition, upon electing Option 3, all members and their collective bargaining agents, if any, must receive progress reports within six months of the end of each plan fiscal year that a subsequent valuation is filed. The report must update the transfer ratio and estimated annual contributions. For active members, the progress report can be included in the member's annual pension statement.

Other changes

Early adoption of the revised CIA commuted value standard

As previously announced by the government, the amendment permits the use of the Canadian Institute of Actuaries' revised Standard of Practice for Pension Commuted Values, in effect from April 1, 2009, for the purpose of solvency valuations with valuation dates on or after December 12, 2008. This will, all else being equal, reduce the solvency liabilities for the valuation.

No contribution holidays in 2010 to 2012

Regardless of whether a plan opts for the solvency relief, with the exception of designated plans, contribution holidays are not permitted for plan years ending between June 30, 2010 and December 31, 2012, unless an actuarial cost certificate demonstrating that the plan has a sufficient funding excess is filed with the Superintendent within 90 days of the beginning of the fiscal year. The actuarial cost certificate need not be a full valuation—actuaries can employ extrapolation techniques to determine the funding excess. In general, a plan sponsor will be able to reduce contributions otherwise due by the lesser of the going concern surplus and the solvency surplus.

This provision impacts plans that are currently taking a contribution holiday. Take, for example, a pension plan that filed an actuarial report with a valuation date of July 1, 2007 and is now on a scheduled three-year contribution holiday. Its next plan year ends on December 31, 2009. The new regulatory requirement means that if the plan sponsor wants to continue the contribution holiday beyond January 1, 2010, the plan must file an actuarial certificate demonstrating sufficient surplus by March 31, 2010, otherwise the plan sponsor must resume payment of contributions towards normal cost. Canada Revenue Agency will need to be notified if there was an excess surplus.

Commuted value and portability of pension benefits

The main surprise found in the amendment is a restriction in the portability rules. Until now, the prior approval of the Superintendent was only required to transfer any part of the commuted value where the transfer ratio was above one and the administrator knows or ought to know that, since the last valuation report, the transfer ratio has declined by 10% or more to below 0.9. The prior approval of the Superintendent is now required where the decline is expected to be more than 10%, regardless of the starting point.

This restriction will make plan administration more difficult and could cause delays in the payment of commuted values, depending on the process developed by FSCO for approvals of this type. Had this been in place over the past 12 months, a plan could have been required to make several applications for approvals, based on the dips in the market.

Changes to locked-in accounts

As promised in the 2009 budget, there is a change to the rules governing locked-in accounts in Ontario. The main change is the increase of the one-time maximum unlocking from 25% to 50% of the assets held in a Life Income Fund (LIF), effective January 1, 2010, with specific transition rules applicable to existing accounts. This change puts Ontario's unlocking percentage in line with Manitoba, Alberta, and federally regulated LIFs.

Commentary on solvency relief

The financial crisis has affected all pension plans in Canada. Almost all jurisdictions have come forward with various means to ease the situation for the defined benefit pension plans they regulate. The proposed measures reflect the diversity of pension regulations across Canada with one common theme—that relief is only temporary.

The impact of each relief option, or a combination of them, will be different for each defined benefit pension plan. Plan sponsors will need to decide which option(s) to elect based on their ability to finance the cash requirements and their ability to secure plan members' consent for extending the solvency period for new deficiencies to ten years. Although active employees may agree to the extension, as a way of securing their jobs, retirees have less reason to accept the extension.

Clearly, communicating the relief available to plan members will be key over the short-term. The disclosure noted in the regulation, provided in isolation, is unlikely to do the job. We suggest plan sponsors and administrators speak to their actuaries, pension consultants, and communication advisors soon to understand the impact of the relief being offered and how best to communicate it.

This Analysis has been prepared for general information purposes only and does not constitute professional advice. Should you require professional advice based on the contents of this Analysis, please contact an Eckler consultant.

Halifax
902 492 2822

Quebec City
418 780 1366

Winnipeg
204 988 1586

Barbados
246 228 0865

Montreal
514 395 1188

Toronto
416 429 3330

Vancouver
604 682 1381

Jamaica
876 908 1203

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