Manitoba

Office of the Superintendent - Pension Commission

Policy Bulletin #12

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Funding Requirements for Defined Benefit Provisions
Remitting Contributions

Reference: *The Pension Benefits Act Sections 26(1) and the Pension Benefits Regulation Divisions 1 and 2, Part 4*

The Pension Benefits Act (Act) requires a pension plan containing a defined benefit provision that is filed for registration to contractually provide for funding, in accordance with the tests for solvency prescribed by the *Pension Benefits Regulation* (regulation) that is adequate to provide for payment of all pension and other benefits required to be paid under the terms of the plan.

A "defined benefit provision" is a plan provision under which a member's pension is to be determined with reference to the member's remuneration for each year of employment, or for a selected number of years of employment, or is expressed as a fixed amount for each year of employment, or as a fixed periodic amount.

Part 4 of the regulation sets out the obligations of employers and administrators in relation to the funding of pension plans. Division 1 contains general provisions respecting payments and contributions by members and employers. Division 2 establishes funding requirements in relation to plans with a defined benefit provision. It requires a plan to meet the tests for solvency and requires employers to make contributions in respect of normal actuarial cost as well as any unfunded liability or solvency deficiency. Division 2 also requires the administrator to have the plan reviewed from time to time to ensure that the defined benefits are adequately funded.

MEETING THE TESTS FOR SOLVENCY

While the Act requires a plan to provide for funding in accordance with the prescribed tests for solvency, it also requires the commission to cancel the registration of a plan that fails to meet these tests. The employer must make all contributions necessary to ensure that a plan meets the tests for solvency. For these purposes, a plan is considered to be adequately funded, and to meet the tests for solvency, if

(a) in respect of current service, contributions are being made to cover the plan's normal actuarial cost as set out in the plan's latest actuarial valuation report or cost certificate;

(b) on a going concern basis, the plan does not have an unfunded liability or, if it has one, special payments are being made to amortize the liability as required by the regulation; and

(c) on a solvency basis, the plan does not have a solvency deficiency or, if it has one, special payments are being made to amortize the deficiency as required by the regulation or a letter of credit is being used to secure the special payments.

To ensure that a plan meets the tests for solvency, the administrator of the plan must ensure that the plan is reviewed by a Fellow of the Canadian Institute of Actuaries, the results of the review are set out in an actuarial valuation report and a cost certificate, and the actuarial valuation report and cost certificate is filed with the commission, all as required by the regulation.

For purposes of the review, an actuary is required to provide opinions on the financial condition of the plan and on the contributions required to be made to the plan on the assumption that the plan will be a going concern and will not terminate, and that the plan has terminated at the review date. In support of his or her opinions, the actuary must prepare an actuarial valuation report and cost certificate setting out the results of a going concern valuation based on the first assumption and a solvency valuation based on the second.

In addition to determining the plan's normal actuarial cost, the actuary must compare the plan's going concern liabilities, as accrued to the date of the review. If the liabilities exceed the assets revealing an unfunded liability, the employer is obliged to make special payments to the plan sufficient to amortize the unfunded liability over a period not exceeding 15 years from the review date relating to the establishment of the unfunded liability.

In examining the solvency of a plan, the actuary must compare the plan's liabilities determined on a plan termination basis to the value of solvency assets. If a deficiency exists, then an employer is obligated to make special payments to the plan sufficient to amortize the solvency deficiency over a period not exceeding 5 years from the review date relating to the establishment of the solvency deficiency.

In preparing a solvency valuation, all benefits which would be payable upon the termination of the plan must be included in the liabilities of the plan. Members not yet eligible to commence a pension must be given the right to transfer the commuted value of their pensions from the plan on plan termination. The actuary must use the transfer value assumptions in accordance with the most recently adopted official guidelines or standards issued by the Canadian Institute of Actuaries, as amended to the relevant time, to value the benefits for these members. The interest rate prescribed by those standards as at the date of the hypothetical termination must be used. Please refer to Policy Bulletin #7 – Determination and Transfer of Commuted Values for further information on these standards.

Additionally, for purposes of determining the plan's solvency assets on the review date, the actuary must reduce the assets by his or her estimate of the expenses that would be incurred by the pension fund in winding up the plan.

Solvency assets include:

(a) any cash balance;

(b) any accrued and receivable income and contributions;

(c) the actuarial present value as of the review date, determined using the same assumptions that are used in determining the solvency liabilities as of that date, of

(i) any special payments payable in respect of benefits for employment before the effective date of the plan, if no benefits for that employment were provided under the plan before the establishment of the special payments, and

(ii) any other special payments that are payable over the five years following that review date; and

(d) money committed under a letter of credit.

Timing of the Review

Subsection 4.12(1) generally requires a plan to be reviewed and filed as of each of the following review dates:

(a) in the case of a new plan, the effective date of the plan;

(b) the end of the third fiscal year of the plan and thereafter at the end of a fiscal year that is not more than three fiscal years after the last review date;

(c) if an actuarial valuation report or cost certificate for a review date indicates that the solvency ratio is less than 0.9, at the end of the first fiscal year following that review date;

(d) the last day of the fiscal year preceding the year in which an amendment is made that affects the cost of benefits under the plan, creates an unfunded liability or a solvency deficiency, or otherwise affects the solvency or funding of the plan;

(e) the review date specified by the superintendent in a written notice under section 3.27 (special reports) if a review is required for the special report required by that notice.

Content of Actuarial Valuation Report or Cost Certificate

Subsection 4.16(1) requires the following information to be included in the actuarial valuation report or cost certificate prepared in respect of a review:

(a) the estimated total dollar cost of benefits for all members, showing separately the employer contributions and the member contributions relating to the normal actuarial cost

(i) for the fiscal year following the review date, where that date falls on the last day of a fiscal year, or
(ii) for the fiscal year in which the review date falls, where the date falls on any other day;

(b) the rules used to compute the normal actuarial cost and to allocate the cost between the employer and the members in respect of employment in the period covered by the report or certificate;

(c) in the case of a multi-unit plan in which the contributions of the participating employer are based on a fixed rate or amount,

(i) the rate or amount that is to be contributed by the employer and a member,
(ii) a breakdown of the rate or amount referred to in subclause (i), stating the rate or amount that is attributable to the plan's normal actuarial cost, to the amortization of any unfunded liability or solvency deficiency, and to any contingency reserve, and
(iii) the average number of hours of employment per member per fiscal year that is assumed for the purpose of the review;

(d) the plan's going concern assets, their market value and, if relevant, their book value, the going concern liabilities and going concern ratio as of the review date, and a description of the methods and assumptions used to determine them;

(e) if the plan has both a defined benefit provision and a defined contribution provision, the portion of each amount reported under clause (d) that relates to the defined benefit provision;

(f) the plan's solvency assets, solvency liabilities and solvency ratio as of the review date, and a description of the methods and assumptions used to determine them;

(g) if the plan has both a defined benefit provision and a defined contribution provision, the portion of each amount reported under clause (f) that relates to the defined benefit provision;

(h) a breakdown of the going concern liabilities under clause (d) and the solvency liabilities under clause (f) according to the following categories:

(i) active members,
(ii) members, other than active members, who have not commenced receiving pensions under the plan, and any other persons who have a future entitlement to receive pensions under the plan,
(iii) members, other than active members, who are receiving their pensions under the plan, and any other persons who are receiving payments from the plan;

(i) in respect of any unfunded liability, the date it was established, the unamortized balance as of the review date, the special payments to be made to amortize it, and the date on which it will be amortized;

(j) in the case of a review date after the effective date of the plan, a reconciliation of the results of the review, and identification of the sources of going concern actuarial gains and losses, since the immediately preceding review date;

(k) the surplus of the plan and, if known to the person who made the review, a description of how it will be utilized;

(l) in respect of any solvency deficiency, the date it was established, its unamortized balance as of the review date, the special payments to be made to amortize it, and the date on which it will be fully amortized;

(m) in the case of a review date after the effective date of the plan, the solvency gain;

(n) any other information that the superintendent requires to determine whether the plan meets the tests for solvency set out in section 4.6.

If the actuary is not satisfied that the actuarial methods used would reveal an unfunded liability or solvency deficiency in the plan, supplementary calculations must be performed to determine whether the tests for solvency are being met, and must so certify.

If the superintendent considers that an actuarial valuation report, cost certificate or interim cost certificate does not conform to the requirements of the regulation, he or she may, by written notice, require the administrator to have the report or certificate amended by the person authorized to

prepare it, and the administrator must comply with the direction within the time specified in the notice.

Cost Certificate

Section 4.15 of the regulation requires that an actuarial valuation report and a cost certificate must be filed. The cost certificate must be filed in a form and manner approved by the superintendent. The superintendent requires the use of the following forms:

OSPC-CC-2011 - Cost Certificate
OPSC-ICC-2011 - Interim Cost Certificate

Deadline for Filing Report or Certificate

The administrator must ensure that the actuarial valuation report and cost certificate prepared as of a review date are filed with the commission as follows:

(a) within 60 days after the plan is established, if the review date is the effective date of the plan;

(b) within 270 days after the review date, if the review date is the end of the third fiscal year of the plan and thereafter at the end of a fiscal year that is not more than three fiscal years after the last review date;

(c) within 120 days after the date of the amendment, if the review date is the last day of the fiscal year preceding the year in which an amendment is made that affects the cost of benefits under the plan, creates an unfunded liability or a solvency deficiency, or otherwise affects the solvency or funding of the plan;

(d) within 270 days after the date of the superintendent's notice requiring the administrator to provide a special report, if the review is required for that special report.

These filing deadlines are set by the regulation. Neither the superintendent nor the Pension Commission has authority to extend deadlines or grant exceptions.

Special Payments

Instead of making equal special payments as required by clauses 4.18(1)(b) and (c) of the regulation, the employer may elect to make the special payments on the following basis:

(a) each payment is a constant percentage of the projected future payroll of the members determined as of the review date as of which the unfunded liability or solvency deficiency was established; and

(b) at the beginning of the applicable amortization period, the actuarial present value of the special payments to be made over the term selected is equal to the unfunded liability or solvency deficiency, as the case may be.

At any time, an employer may increase the rate of amortization of an unfunded liability or solvency deficiency by increasing the amount of the special payments, making special payments in advance or making additional payments of any kind. Where the rate of amortization is increased or an actuarial gain is allocated to amortize or reduce an unfunded liability, the amount of special payments for a later fiscal year may be reduced.

Where an actuarial valuation report or cost certificate reveals that the plan has a going concern or solvency actuarial gain the gain must be used to amortize or, where it is not sufficient to amortize, reduce the outstanding balance of any unfunded liabilities or solvency deficiencies with the oldest established liabilities or deficiencies being amortized or reduced before later ones. Further, where a gain has been used to reduce an unfunded liability or solvency deficiency, the special payments to be made may be reduced on a prorated basis over the remainder of the term.

Where a solvency deficiency has been amortized, the plan's actuary may recalculate any special payments for any unfunded liability that has not been amortized.

Letters of Credit

Section 4.18.1 of the regulation permits an employer with a defined benefit plan, other than an employer under a multi-unit pension plan, to secure some or all of a plan's solvency special payments through a letter of credit that meets certain prescribed requirements. The letter is provided to the fund holder in lieu of making cash remittances with respect to solvency special payments.

Please refer to Policy Bulletin #10 - Letters of Credit for further information on the regulatory requirements and related guidelines for the use of letters of credit to fund plan solvency deficiencies.

Multi-Unit Pension Plans

Section 26.1 of the Act provides for the establishment and designation of multi-unit pension plans. A participating employer's liability for funding the benefits of a multi-unit pension plan is limited to the amount the participating employer is contractually required to contribute to the plan.

The actuary reviewing a multi-unit pension plan must perform the supplementary tests necessary to demonstrate that the rate and amount of the required contributions to the plan are sufficient for it to meet the tests for solvency. If the actuary is not able to demonstrate that the required contributions are sufficient, he or she must advise the plan administrator in writing and must propose options for making the plan meet the solvency tests.

The administrator must

(a) select one of the options proposed by the reviewer;

(b) file the proposed options with the superintendent and indicate which option will be implemented; and

(c) notify the members and other beneficiaries in writing of the option that will be implemented and the reasons that option was selected.

The administrator must comply with the option selected before the actuarial valuation report or the cost certificate or interim cost certificate is filed with the commission.

A multi-unit plan may provide for some or all of the assets, liabilities, surplus (including gains) and administrative expenses relating to the employers to be determined separately for each employer, in which case each employer must comply with the requirements of Part 4 of the regulation with respect to its allocated share of contributions required to fund the plan.

Contribution Holidays

If an actuarial valuation report or cost certificate reveals that a plan has no unfunded liability and no solvency deficiency, the whole or any part of any surplus may be used, applied or paid as follows:

(a) used to increase benefits;

(b) applied to reduce

(i) employer contributions, unless expressly prohibited by the terms of the plan, or
(ii) member contributions, if expressly permitted by the terms of the plan; or

(c) with the consent of the commission upon application by the employer, paid to the employer.

However, surplus can only be applied to reduce contributions as mentioned above if the reduction in contributions does not reduce the surplus to less than 5% of the plan's solvency liabilities determined as of the latest review date.

Please refer to Policy Bulletin #6 - Payment of Surplus from Pension Plans for further information on the conditions for the payment of surplus to an employer.

SPECIAL ISSUES

Plan Amendments and Review Dates

If an amendment affects the cost of benefits under a pension plan, creates an unfunded liability or a solvency deficiency, or otherwise affects the solvency or funding of the plan, the administrator must have the plan reviewed as of the last day of the fiscal year preceding the year in which an amendment is made (executed). The administrator must file the cost certificate within 120 days after the date the amendment is made.

Alternatively, the administrator may have the results of the last review adjusted to take the amendment into account and an interim cost certificate prepared as of the date the amendment is made.

The interm cost certificate must show the effect on the plan's normal cost, going concern and solvency assets and liabilities, funded and solvency ratio, and any new unfunded liability or solvency deficiency and special payments to be made with respect to it. The amortization period for any special payments required because of the amendment commence on the day the amendment is made. The actuary must be confident that the data, assumptions and actuarial methods used in the last review remain appropriate. The administrator must file the cost certificate within 120 days after the date the amendment is made. For further clarity, assume a pension plan was amended by resolution of a company's board of directors on October 4, 2013, and the plan was last reviewed as of December 31, 2011.

If the administrator is having the plan reviewed and a new actuarial valuation report prepared, the date for this review would be December 31, 2012. The report would be required to be filed with the commission within 120 days after October 4, 2013, or by February 1, 2014. The plan's next review date would be no later than December 31, 2015, three years after the last review date, December 31, 2012.

However, if the administrator is having the results of the last review as of December 31, 2011 adjusted to take the amendment into account and an interim cost certificate prepared, an interim cost certificate would be required to be filed with the commission within 120 days after October 4, 2013, or by February 1, 2014. The plan's next review date would be not later than December 31, 2014.

Final or Best Average Earnings

In a final or best average earnings type of plan, where the pension is based on a rate of salary at retirement date or on average of salaries over a specified and limited period, a projection of the salary of each member must be used to estimate the salary on which the pension payable at retirement date will be based when conducting a going concern valuation. A solvency valuation normally would not take into account a projection of salary.

Second, if the actuarial basis used in the actuarial valuation is such that an unfunded liability or solvency deficiency may not be revealed, as is the case with the Aggregate Method, then the actuary must perform supplementary calculations to show that the solvency tests are being met, and must certify to conducting those calculations and to the solvency tests being met.

Defined Contribution Plans Underwriting Annuities

A defined contribution plan that underwrites annuities for its members provides those annuities under a defined benefit provision and must be funded in accordance with the prescribed tests for solvency.

Transfer Deficiency

Where the solvency ratio of a plan is less than one, the plan administrator may only transfer the solvent portion of the benefit. Any transfer deficiency related to the benefit must continue to be held under the plan, in accordance with section 4.30 of the regulation. The transfer deficiency would then be transferred later, but within 5 years of the initial transfer. This additional transfer must include interest at the rate used to determine the commuted value and include interest to the end of the month immediately preceding the date of payout.

Please refer to Policy Bulletin #7 – Determination and Transfer of Commuted Values for further information on transfer deficiencies.

Designated Plans under the *Income Tax Act*

Third, pension plans that are considered Designated Plans under the *Income Tax Act* (Canada) (ITA) are subject to the funding requirements under the Act and regulation. However, the Office of the Superintendent – Pension Commission (OSPC) recognizes that an employer may not make contributions to a Designated Plan in excess of the eligible contributions permitted under the ITA in any given plan year.

If contributions to the plan are constrained by the funding restrictions of the ITA, the OSPC expects the report to:

- provide the required going concern and solvency balance sheets, as well as the balance sheet resulting from the Maximum Funding valuation of the plan;
- state the resulting funding requirements as per the regulation;
- state the amount of eligible contributions under the ITA; and
- clearly describe the amount and timing of contributions to be made to the plan.

The actuary should select reasonable going concern actuarial assumptions without regard to the fact that the plan is a Designated Plan under the ITA. In particular, the discount rate and retirement age assumptions (if the plan includes early retirement subsidies) prescribed under the ITA are not appropriate going concern assumptions for the funding requirements under the regulation.

An actuarial report filed in respect of a Designated Plan must include the solvency position of the plan and any special payments required under the regulation, whether the special payments can be made or not. Solvency special payments otherwise required under the regulation should be made unless they are not eligible contributions under the ITA. A contribution that is not made in a period because it is not an eligible contribution under the ITA should not be counted as a receivable asset in a subsequent report.

Lastly, on the termination and wind up of a Designated Plan, the funding requirements of the Act and regulation would apply. Please refer to Policy Bulletin #9 - Termination and Winding up of Plans.

Alternative Settlement Methods

The Canadian Institute of Actuaries published an Educational Note – Alternative Settlement Methods for Hypothetical Wind-Up and Solvency Valuations. This educational note followed from a Revised Educational Note Supplement: Guidance for Assumptions for Hypothetical Wind-Up and Solvency Valuations Update – Effective June 30, 2013, and Applicable to Valuations with Effective Dates Between June 30, 2013, and December 30, 2013.

The alternative settlement methods educational note indicates that alternative methods may be permitted by law, regulatory policy, or guidelines.

In consideration of the alternative settlement methods educational note, as well as the requirements of legislation, other alternative settlement methods are not considered acceptable to the superintendent.

PAYMENT OF MEMBER AND EMPLOYER CONTRIBUTIONS

Division 1 and section 4.18 of Division 2 of Part 4 of the regulation contain general provisions respecting payments and contributions by members and employers.

Any member contributions to a plan that are received by the employer from the member or are deducted by the employer from a member's remuneration must be remitted by the employer to the plan within 30 days after the end of the month in which they were so received or deducted.

Subsection 4.18(1) of the regulation requires the employer to pay into the plan

> (a) the employer's portion of the normal actuarial cost of current service as set out in the latest actuarial valuation report or cost certificate filed with the commission;
>
> (b) if the plan has an unfunded liability, equal payments in an amount that is sufficient to amortize the liability over a term of not more than 15 years from the review date as of which the liability was established; and
>
> (c) if the plan has a solvency deficiency, equal payments in an amount that is sufficient to amortize the deficiency over a term of not more than five years from the review date as of which the deficiency was established.

The employer's contributions are payable at least monthly, and no later than 30 days after the end of the period for which they are payable.

Lastly, if the period covered by the last actuarial valuation report filed has ended, the employer must continue to make payments in accordance with that report until a new one is filed. However, within 30 days after an actuarial valuation report is filed, the employer must pay into the plan all monthly amounts, if any, that have not yet been paid and that would have been required to be paid in accordance with that report, including interest on each payment from the last date the payment was required to be made to the date of payment, at the same interest rate as was used in determining the employer contributions.

If you have any questions regarding this bulletin you may contact us at:

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