ACPM | ACARR
The Association of Canadian Pension Management
L'Association canadienne des administrateurs de régimes de retraite

May 26, 2020

Honourable Don Morgan, Q.C.
Minister of Justice
Room 355 Legislative Building 2405 Legislative Drive
Regina SK
S4S 0B3

Dear Minister Morgan:

Re: Pension Plan Challenges Posed by the COVID-19 Situation and Potential Measures that Could Greatly Assist Pension Plan Administrators and Employers

ACPM is the leading advocate for plan sponsors and administrators in the pursuit of a balanced, effective and sustainable retirement income system in Canada. We represent plan sponsors, administrators, trustees and service providers. Our membership represents over 400 companies and retirement income plans that cover millions of plan members.

We wish to start by expressing our appreciation for the announcement made by the Financial and Consumer Affairs Authority of Saskatchewan (FCAA) on April 16, 2020, temporarily freezing portability transfers out of defined benefit plans as well as the extensions granted on certain filing deadlines. We feel both are positive changes and will help ease some of the challenges our members are facing right now.

We have spent time over the past weeks considering the immediate challenges that pension plan sponsors are facing due to the COVID-19 outbreak. Below we summarize the key challenges as well as some suggestions on how, through further legislative changes, these challenges could be addressed.

IMMEDIATE CHALLENGES

The immediate challenges facing our members cannot be overstated. While some have particularly acute challenges due to their revenues virtually drying up overnight, many are facing liquidity challenges as this crisis deepens and persists. The challenges can be summarized under four main headings:

1. **Cash flow shock:** Revenues for many businesses have dwindled nearly overnight. Some members have expressed concerns that unless cash is conserved within the business to address immediate concerns out of the COVID-19 situation, the business may not survive the dramatic decrease in cash flow experienced in the past few weeks. While circumstances are expected to normalize when we come out of this crisis and businesses start recovering, the ability to conserve cash for the business is paramount. Recovery times are anticipated to vary by industry.

2. **Dire need for certainty:** In the face of the cash flow shock outlined above, there is a dire and immediate need for medium-term certainty regarding cash-outflows, including pension payments. For those plans that continue to be subject to solvency funding regulations, the volatility of, and possible increase in solvency, given the current economic turmoil is a key item on which certainty is desperately needed.

3. **Concern over large portability transfer amounts:** In addition to the extreme volatility in the equity markets, we are aware that fixed income instruments, even short-term instruments, have become very illiquid, with bid-ask spreads rising dramatically. Many plans, especially those that are cash flow negative are seeing challenges in raising the cash needed to pay monthly pensions as well as large lump sum portability transfer amounts. The recent market volatility has also caused a significant increase in the portability values attributed to lump sum termination benefits. This, coupled with a significant increase in layoffs and terminations, is likely to cause a significant level of lump sum payments flowing out of pension plans. This has been identified as a concern by many plans since there may be a need to liquidate assets at depressed market values in order to meet these cash flow requirements.

MEASURES THAT COULD DRAMATICALLY ASSIST PENSION PLAN SPONSORS

In addition to the recent freeze on transfers, we have provided two additional suggestions for your consideration:

1. **Suspend special payment obligations:** The option for a plan sponsor to delay making normal cost contributions and to suspend special payments would be extremely helpful to organizations that have a significant reduction in revenue at this time. Our members felt that an extension in the deadline to make special payments had the potential to result in a very large payment becoming due just as we are coming out of this crisis, thus preventing employers from getting back on their feet. In addition, the complex rules and case law regarding the regulation of pension plans which create a "deemed trust" for missed payments may result in employers being offside on the strict covenants in lending facilities, with the possibility of employers being in a technical default under such facilities. This "deemed trust" would need to be overridden in any regulations that provide for a suspension of special payments.

   Given the foregoing, ACPM urges a regulatory suspension on special payments (as opposed to a delay) for at least the balance of 2020. Given the current uncertainty, we recommend that special payments only recommence six months after an announcement from the government that the moratorium will cease. The impact of the suspension of special payments would then be evaluated at the next filed actuarial valuation in order to avert a large one-time payment being required.

   With respect to normal cost, a deferral could also be considered, with the drafting cognizant of deemed trust issues.

2. **Minimize Solvency Funding Over Medium-term:** It is extremely difficult for businesses to know how much time it will take businesses to recover from this crisis, and some businesses will struggle longer than others due to the very nature of their business. Following the immediate crisis, stability of future funding requirements for those plans that are subject to solvency funding will be critical.

ACPM believes that this situation presents an opportunity to re-think solvency funding – a funding measure from which "relief" has been granted at the bottom of nearly every economic cycle and market shock since its inception in the 1980s, in economic circumstances that differ greatly from the current persistent low long-term interest rate environment. **We urge similar measures to that which other pension jurisdictions either have already adopted or are in the process of adopting. Key measures would include basing funding on a going-concern model and eliminating solvency requirements except for a minimal solvency ratio floor such as 85%.** Employers and plan sponsors would greatly appreciate an announcement of an upcoming consultation on the defined benefit funding model. You could then revisit limited liability pension plan legislation shortly thereafter, potentially building off such a revised funding model.

Notwithstanding the foregoing, if the Government is only willing to provide temporary funding relief at this time, **we urge the Government to make the relief broadly available, as an option to organizations to use without restriction or qualification.** The 2009 crisis was the biggest we had seen in a generation. By all accounts, this crisis overshadows the events of 2009 by multitudes and, in our view, warrants more significant, broad-based pension funding relief.

Thank you once again for giving us the opportunity to discuss the challenges facing pension plan administrators and employers and some additional measures which could be extremely helpful in the immediate term and the mid-term as we exit the crisis. Please feel free to contact us if we can be of further assistance.

Sincerely,

Ric Marrero
Chief Executive Officer
ACPM

Paula Potter
Vice-Chair, Prairie Regional Council
ACPM