



CONFIDENTIAL

May 8, 2020

Honourable Travis Toews
President of Treasury Board and Minister of Finance
Executive Branch
208 Legislature Building
10800 - 97 Avenue
Edmonton, AB
T5K 2B6

Via e-mail: tbf.minister@gov.ab.ca

Dear Minister Toews:

**Re: Submission by the Association of Canadian Pension Management -
ACPM Alberta Regional Council**

We are pleased to provide this submission from the Alberta Regional Council of the Association of Canadian Pension Management (ACPM) on behalf of Alberta pension plan sponsors and administrators, regarding potential short term measures and amendments to the Alberta *Employment Pension Plans Act* and the Alberta *Employment Pension Plans Regulations* (together the "EPPA") for your consideration.

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 and our membership represents over 400 organizations and retirement income plans that cover millions of plan members. We appreciate the opportunity to submit our recommendations on measures to assist Alberta pension plans and their sponsors while weathering the impact of the COVID-19 pandemic and the uniquely prolonged and difficult economic conditions Alberta is experiencing.

We have consulted with our Alberta Regional Council, which is composed of employers, plan sponsors, administrators and their advisers, as well as other affected Alberta plan sponsors and employers.

Our submissions were developed within the following framework:

- Recognition of the financial impact on Alberta's economy and businesses resulting from the COVID-19 pandemic and the extreme economic downturn following the unprecedented collapse of oil prices;
- The need for "made-in-Alberta" measures focused on Alberta pension plan sponsors, administrators and their members and their unique circumstances in contrast to other pension jurisdictions in Canada;

- In light of Alberta's current economic conditions, there is an increased need to balance the potentially competing interests of member security and contribution flexibility;
- All ideas should be brought forward, even if they might otherwise be considered unconventional or, due to the Alberta's particular circumstances, different from what we may recommend in other Canadian jurisdictions; and
- Recognition that the pension funding relief measures we are recommending in this submission may still not be enough to alleviate the financial distress of some Alberta plan sponsors and employers and they may need to approach the Government of Alberta to seek more extensive financial aid for their businesses.

Some of our recommendations will require changes to the EPPA, its regulations and other legislation, such as the *Income Tax Act (Canada)* or Alberta's *Employment Standards Code*.

The body of this letter contains our submission on actions that could have an immediate positive impact for Alberta pension plans and their sponsors over the short term. The Appendix outlines long-term pension reform considerations, which are significant and would likely necessitate further review by policymakers as well as consultation with Alberta's pension industry.

Unless otherwise noted, our submission relates primarily to defined benefit (DB) pension plans registered under the EPPA. The suggestions we received from our Alberta members are collated below under five categories:

- 1) Contributions and Funding;
- 2) Commuted Values;
- 3) Plan Administration;
- 4) Defined Contribution Pension Plans; and
- 5) CAPSA.

CONTRIBUTIONS AND FUNDING

Currently, Alberta employers critically need to conserve cash in order to survive the current economic crisis. However, we expect a number of pension plan sponsors and employers will not survive and become insolvent in the short-term, which raises heightened concern among our members for the security of pension benefits accrued under the affected pension plans.. Based on these unique conditions in Alberta, the following is a list of recommended measures regarding the funding of Alberta pension plans in the short term:

- 1) Ongoing contributions, encompassing current service and going-concern special payments, should continue to be made into pension plans to promote liquidity and benefit security;
- 2) Special payments on a solvency basis may be deferred, at the option of the plan sponsor, on the following conditions:
 - a) Deferral of solvency special payments for a one year period, following which a sponsor could re-apply annually; amount at end of deferral should be re-amortized;

- b) Plan members to be notified on the next annual statement;
 - c) If deferral is not permitted, then current solvency relief should be extended; and
 - d) While it is not ACPM's usual position in seeking solvency special payment relief in other jurisdictions, due to the uniquely dire economic circumstances in Alberta, we recommend in this case that any deferred or waived special payments still be subject to the deemed trust provisions of the EPPA. In our normal view is the waiver of special payments contributes to the security of member benefits by boosting the sponsor's cash flow to weather the economic storm and preventing the winding up of an under-funded plan. However, if it is expected that a number of sponsors will likely not be able to continue to operate, regardless of solvency payment relief, the need to secure member benefits through the deemed trust protections of the EPPA is increased.
- 3) Allow plans that are committed to filing a valuation to immediately suspend contributions until the valuation is filed, then a "catch-up" contribution be remitted with the "catch-up" contributions being recognized in a deemed trust until such remittance;
 - 4) Consider extending filing deadlines by another 90 days for plans performing a December 31, 2019, valuation whether it is a triennial valuation or not;
 - 5) There should be no additional funding triggered by pandemic impacts in 2020 (i.e., subsequent events to the December 31, 2019 valuation report);
 - 6) The Regulator should provide guidance indicating that plans amended to temporarily cease benefit accruals will not trigger a plan wind-up.
 - 7) Any plan change to employee contributions should be via amendment – suspending accrual of service, changing AVC's, OAC's, etc.

Additional short-term considerations for Collectively Bargained Multi Employer Pension Plans

- 1) Extend going-concern amortization to 15 years given a significant reduction in Expected Future Service as a result of job losses (including restatement of previously filed amortization schedules);
- 2) Temporarily eliminate the PfAD funding requirement on the contributions for future service under Section 61 of the EPPA Regulations;
- 3) The Regulator could provide guidance indicating that he will be receptive to submissions and exercise his discretion to permit the following:
 - a) Allow for temporary suspension of contributions without triggering a plan wind-up;
 - b) Permit CBMEPPs with a going concern surplus (perhaps in excess of a threshold) to apply the surplus for contribution holidays; case-by-case approval by the Superintendent.

COMMUTED VALUES

Based on the feedback we received, our recommendations are as follows:

- 1) Given the difficulty in determining a reliable up-to-date transfer ratio, the government could implement a temporary full freeze on portability transfers and annuity buy-out purchases relating to defined benefit provisions of pension plans. We suggest a 90-day freeze period. A temporary freeze is recommended for the following reasons:
 - a. That current financial market conditions have negatively affected the funded status of DB pension plans;
 - b. The resulting extremely low interest rates have also had a major impact on commuted value calculations and;
 - c. The potential negative impact on plan funding ratios of a high number of plan member termination cases that may arise due to the increased employment terminations and general economic crises conditions in Alberta.
- 2) The payment of pensions to retirees and other beneficiaries is not impacted by the temporary freeze on portability transfers and annuity buy-out purchases;
- 3) This temporary freeze would apply to all termination of membership situations, as well as divisions of pensions and plan member deaths before retirement, including any transfers already initiated but not yet paid;
- 4) Once the temporary freeze is lifted, the calculation of the commuted value will be based on the commuted value basis rates applicable at that time (for example, not the rates that were applicable in April of 2020);
- 5) The EPPA “administrator” has the option to apply to the Regulator to request the “administrator’s” plan be exempted from the temporary 90-day full freeze or in cases where a plan wind-up is in progress.

PLAN ADMINISTRATION

The global COVID-19 pandemic has made on-going pension plan administration challenging. As such, we suggest the following measures be put in place:

- 1) The Alberta government enact legislation that provides that electronic communications are acceptable under the EPPA, notwithstanding any other legislative requirements to the contrary, including the following:
 - a. that all forms required to administer the plan may be submitted electronically with electronic signatures (e.g., beneficiary and other prescribed forms, termination / retirement / death pension election forms, annual pension statements);

- b. implement a deemed consent regime for pension plan electronic communications (i.e., plan members opt out of versus opt into electronic communications). For example, implied consent for electronic communications would apply if a member or former member gave the plan administrator his/her email, failing which paper communications would be required; and
 - c. Allowing scanned copies of completed forms and e-signatures/e-forms to be treated the same (legally) as wet signatures for plan administrators and financial institutions receiving pension forms.
- 2) Easing pension plan administration as follows:
- a. General extension of filing deadlines (e.g., AIR, financial statements, active and inactive statements, etc.);
 - b. The triennial governance self-assessment requirement be postponed to 2021;
 - c. Amend the regulations to temporarily eliminate witness signature requirements for prescribed forms (e.g., the financial hardship unlocking form and potentially the J&S waiver form if this is acceptable from a pension policy perspective), and allow plan administrators to rely on forms that are otherwise fully completed but not witnessed for the duration of the public health emergency (i.e., we do not require the Regulator to prepare new forms for use in this period, but allow administrators to rely on them and communicate with members that they are not required during this time);
- 3) Consider the balance between protecting employees from financial hardship in the short-term and protecting their retirement income by:
- a) Advocating at CASPA or directly with the Department of Finance Canada for a change to the *Income Tax Act* (Canada) to raise the mandatory retirement income commencement from age 71 to 75 to provide, at a minimum, temporary relief;
 - b) Without a plan amendment, allowing the withdrawal of Voluntary / Optional Ancillary Contributions (OACs) while in active employment without a plan amendment. The voluntary contribution ITA rules are flexible but the plan terms may not permit this action.

DEFINED CONTRIBUTION PENSION PLANS

Our recommendations for these plans are as follows:

- 1) Permit complete suspension of employer and employee required contributions for non-negotiated plans.;
- 2) Amend the regulations to shorten/eliminate the advance notice period required for amendments reducing contribution rates;
- 3) Ensure any temporary changes to the contribution holiday rules continue to permit hybrid plans to use DB surplus to offset employer DC contribution obligations; and

- 4) Provide regulatory support for temporary adjustments to collectively bargained contribution rates (e.g., encouragement of union/employer accords to reduce or suspend contribution obligations, deferral of union grievances relating to pension contributions beyond end of public health emergency).

CAPSA Agreement

Lastly, we would like to highlight one important issue in particular: the need for Alberta to sign the Agreement Respecting Multi-Jurisdictional Pension Plans (the “Agreement”) developed by the Canadian Association of Pension Supervisory Authorities (“CAPSA”). As you know, the regulation of multi-jurisdictional pension plans is currently subject to a patchwork of agreements between different jurisdictions in Canada, which results in complexity and legal uncertainty that adds to the administrative burden on administrators already straining to cope with the challenges of the pandemic.

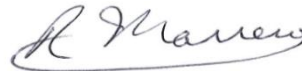
In 2016, the governments of British Columbia, Nova Scotia, Ontario, Quebec and Saskatchewan signed the 2016 version of the Agreement. The 2016 Agreement is currently being revised by CAPSA to address, among other things, certain key funding issues. It is anticipated by CAPSA that all jurisdictions will sign the new Agreement. It is our strong recommendation that Alberta make every effort to do so as well. Any failure to sign the Agreement, especially if all other Canadian jurisdictions proceed, will greatly complicate the administration and regulation of multi-jurisdictional pension plans registered in Alberta and put an unnecessary burden on administrators.

We would be pleased to discuss any aspects of our submission.

Yours truly,



Michael Wolpert
Chair, Alberta Regional Council
ACPM



Ric Marrero
Chief Executive Officer
ACPM

APPENDIX

Future Considerations

CONTRIBUTIONS AND FUNDING

ACPM's submission on future contribution and funding rules, particularly in the context of long-term pension plan sustainability include:

- 1) Alberta should reform pension funding rules, and take the time to get it right as there are long-term impacts
 - a) Reduce emphasis on solvency funding as is the trend across Canada;
 - b) Consider BC's newly adopted legislation as a starting point
 - i. Alberta and BC have expressed desire to have harmonized pension legislation;
 - ii. Enhanced going-concern with a margin;
 - iii. Solvency funding comes into play when less than 85% funded;
 - c) The new funding regime could be used to determine 2021 contributions.
- 2) Consider allowing defined benefit plans the option to convert to target benefit including past service accruals (as was originally contemplated);
- 3) Enact legislation to discharge employer liability after annuity buy-out purchases.

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 funding based on a going-concern model, eliminating solvency requirements except for a minimal solvency ratio floor. Employers and plan sponsors would greatly appreciate an announcement of an upcoming consultation on the defined benefit funding model.

COMMUTED VALUES

ACPM's submission on future commuted value amendments include rationalization of the minimum CV standards and the 50% Cost Rule.

The purpose of a pension plan is to provide pension income during a plan member's retirement years. The

portability rules implemented January 1, 1987, are no longer appropriate in 2020 given the historical and anticipated long period of sustained low interest rates. Accordingly, the calculation basis of commuted values and the 50% rule need to be revised. These changes would decrease the amount of the commuted value and benefit for a terminating plan member. However, the option would continue to exist for a terminating member to leave the benefit in the plan, and not take a CV, and receive a pension at pension commencement date.

The Regulator should rationalize the public policy of the current legislative minimum standards for all plans to be consistent with those to be implemented effective April 1, 2020, for LAPP, PSPP and SFPP. It is understood that this issue is related to the approach the Regulator takes with respect to plan funding rules. This would include the current “50% cost rule”. The CV would have to be at least equal to the value of the member contributions with applied interest.

PLAN ADMINISTRATION & MISCELLANEOUS

- 1) Streamlining the marriage breakdown pension processes, including reducing the number of statements provided to members/pension partners and moving to a simplified model based on the federal PBSA approach without limits on the amount that can be shared between pension partners in order to reduce the burden on administrators needing to confirm that MPO/MPA conforms with EPPA limits.
 - a) At a minimum, correct the dates of Matrimonial Property Orders and Matrimonial Property Agreements that are subject to the EPPA rules, as the current dates were inadvertently preserved from the prior legislation.
- 2) Generalize wording in the EPPA regarding the list of financial institutions that pension funds can be transferred to, as the list becomes out of date with branding changes;
- 3) Improving EPPA wording around prohibition against amendments that reduce accrued benefits in order to better clarify the extent to which benefits are “accrued” and protected;
- 4) Simplifying missing members and unclaimed benefits wording, including working with other government departments to develop an unclaimed property regime. Amended language should include how plan administrators can discharge their obligations to plan members who refuse to accept their pensions.