

advisory

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Ontario solvency relief will result in a busy summer

The Ontario government has finally released legislation which provides the working details of their previously announced solvency relief measures in respect of defined benefit pension plans. Originally announced in December 2008 and committed to in the March 2009 provincial budget¹, the relief measures should provide plan sponsors with some much needed short-term cash funding relief.

In short, an administrator who is filing an actuarial report with a valuation date between September 30, 2008 and September 29, 2011, may now elect one or more of the following three solvency relief options:

1. Defer new special payments for up to one year;
2. Consolidate existing solvency special payment schedules into a new five-year payment schedule; and
3. Extend any new solvency special payments over ten years provided member consent is obtained.

With the continued economic struggles and low asset values at the end of 2008 combined with many plan sponsors facing a required actuarial report filing due in the coming months, or an existing cash contributions schedule that the company cannot afford, administrators and their advisors will be in for a busy summer analyzing these new solvency relief measures and, where feasible, implementing them.

This *Advisory* will examine the Ontario solvency relief measures and the steps plan sponsors have to take to comply with the legislation.

¹ See Buck's March 2009 Advisory "2009 Ontario Budget: Effective Pension Reform, Unworkable Solvency Relief"

Temporary solvency funding relief measures

An administrator of an eligible plan² may make a one-time written election to use any or all of the following solvency relief measures. This election applies only to the first valuation report filed with a valuation date on or after September 30, 2008.

Option 1 – Defer new payments for up to one year

This option allows for deferral of special payments for up to one year (not available to jointly sponsored pension plans, which are subject to existing rules) for

- any new going-concern unfunded liability, or
- any new solvency deficiency established at the relief valuation date.

At the end of the deferral period, cash funding payments will be determined over

- fifteen years for a going-concern unfunded liability, or
- five years for a solvency deficiency (or ten years if Option 3 is elected).

If this option is elected, administrators will be required to issue a general disclosure notice containing prescribed information to affected members within sixty days of the date that the first special payment is required to be made under the new measures.

Comment:

At the end of the deferral period there will be no requirement to make retroactive payments back to the valuation date. All administrators will benefit from this measure over the short term.

² Eligible plan is a defined benefit plan other than a multi-employer SOMEF, Stelco Inc. Pension plan, or those plans which are in a delinquent contribution remittance situation. Note: certain other plan types are excluded as well. Please refer to the FSCO website for details at: <http://www.fSCO.gov.on.ca/english/pensions/legchange2006.asp>

Option 2 – Consolidate existing payment schedules

Under Option 2, existing solvency special payment schedules can be consolidated into a new five-year payment schedule commencing on the valuation date.

If this option is elected, administrators will be required to issue a general disclosure notice containing prescribed information to affected members within sixty days of the date that the first special payment is required to be made under the new measures.

Comment:

This option will simplify the special payments administration and reduce the level of cash funding over the short term.

Option 3 – Extend new payments period up to ten years

The third option allows for an extension of the solvency payment schedule to a maximum of ten years (from the current five years) for new solvency deficiencies commencing on the solvency relief valuation date. This option is not allowed if more than one-third of eligible members and former members object.

In electing this option, the administrator of an eligible plan that is not a jointly sponsored pension plan must:

- file a valuation report with a valuation date after September 30, 2008 and before September 29, 2011;
- make a written election for solvency relief (which cannot be rescinded) and file the election with the Superintendent not later than the date that the valuation report is filed;
- file a certificate of consent with the Superintendent within sixty days of filing the solvency relief report (see "Member consent requirements"); and
- send annual progress reports to eligible members, former members, and any collective bargaining agents.

If if this option is elected, administrators will be required to issue a general disclosure notice containing prescribed information to affected members within sixty days of the date that the first special payment is required to be made under the new measures.

Comment:

The timing of preparing and issuing the information notices, allowing for the forty-five day objection period to expire and filing the solvency relief report, will be a challenge for administrators who have a triennial valuation filing due September 30, 2009.

Member consent requirements under Option 3

Member consent requirements only apply if an administrator elects Option 3. An administrator must issue a prescribed notice package to affected members and, if applicable, to the collective bargaining agent.

This package will consist of an information statement containing certain prescribed disclosure requirements and a notice of objection form. The package must be sent to all eligible members and eligible former members. If there is a collective bargaining agent, then the eligible members only receive the information statement; the notice of objection form is sent to the collective bargaining agent. However, a collective bargaining agent cannot file a notice of objection form on behalf of eligible former members. The former members must be sent a notice of objection form regardless of whether a collective bargaining agent exists.

Eligible members, eligible former members and their collective bargaining agent (if applicable) will have forty-five days after the issue of the notice by the administrator to file an objection.

At the same time the notice package is sent, a copy must be filed with the Superintendent with confirmation of the date that the last notice was sent.

[4]

Comment:

Increased transparency for members appears to be a cornerstone of these solvency relief measures. The disclosure requirements, plus the member consent requirement, will prove challenging for administrators.

The good news is that administrators will not have to track down eligible former members. The requirement to issue the disclosure information is to mail them to the last known address of the former member.

Neither the notice of objection form nor the process for collecting objections can identify a member who submits the objection form. Therefore, administrators will need to devise methods to ensure that members do not submit multiple objection forms while at the same time protecting the privacy of members.

Other NotesBenefit improvements

If Option 2 and/or 3 is elected, any increase in the going-concern unfunded liability resulting from a plan amendment filed after the date the report is due must be amortized over a five-year period (rather than the normal fifteen years) beginning on the valuation date of the actuarial report in which the increase in the going-concern unfunded liability was determined.

Actuarial Solvency Relief Reports

While the Ontario Regulator has not released any guidelines for solvency relief disclosure within an actuarial report, at a minimum the actuarial report should clearly articulate that relief has been elected, with some explanation of the type of relief and its impact on the company contributions. In addition a cover letter requesting relief will have to accompany the filing of the report with the Ontario Regulator.

Conclusion

The relief measures are designed to reduce short-term minimum funding requirements. A pension plan is a component of a company's overall capital structure and a component of its human resource strategy. The accounting implications of revising the funding policy should be measured in addition to the actual cash savings. The human resource advantage of a pension plan should be weighed against the temporary financial advantage of reducing short-term contributions.

The recent volatility of markets has required companies to review how they manage their pension risk. Revising the funding policy should also be accompanied by a review of the investment policy and the plan design. Adopting the government's version of solvency relief may not be enough, or may not be the best strategy for managing your company's pension risk.

Administrators and their advisors will be in for a busy summer analyzing these new solvency relief measures, and there is no doubt that plan sponsors will be able to reduce the cash funding costs as a result of these measures.



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