FTR Now

Ontario Government Announces Pension Funding Relief

Date: December 17, 2008

Spurred on by the current economic unrest, the Ontario Government announced yesterday that it will introduce legislation in early 2009 to provide pension plans with solvency funding relief. Following on the heels of the release of the Report of the Expert Commission on Pensions, the proposed temporary solvency relief is intended to better ensure the security of pensions by strengthening and protecting the short-term viability of Ontario's pension system. Yesterday's announcement represents a unique opportunity for sponsors and employers in Ontario to voice any suggestions and concerns about the proposals and to ensure that the relief is available to those plan sponsors who need it most.

PROPOSED AMENDMENTS TO THE *PENSION BENEFITS ACT*

The government has stated that the proposed legislation will be retroactive to September 30, 2008. It is not known at this time whether this would allow sponsors to refile actuarial valuations that were filed on or after September 30, 2008.

A new regulation under the *Pension Benefits Act* will extend solvency amortization periods from five to ten years for pension plans meeting the eligibility conditions. This is in keeping with the solvency relief introduced for federally regulated pension plans governed under the *Pension Benefits Standards Act* in 2006 and also follows on temporary relief for specified Ontario multi-employer pension plans in 2007.

However, based on yesterday's announcement is appears that access to the extension of solvency funding for single employer pension plans will be tied to the consent of active members or their collective bargaining agents and – most notably – retired plan members. The requirement for retiree consent may preclude access to funding relief for the very employers and plan sponsors that most need the relief, unless a realistic consent threshold is set or the regulation contains the option for relief that is not conditional upon retiree consent. Several other jurisdictions, such as British Columbia and Alberta as well as the Federal Government, have passed regulations providing relief through the use of letters of credit that do not require the consent of members or retirees.

The Government is also proposing further amendments to relieve funding pressures for all plans. These proposals include:

- the consolidation of previous funding schedules;
- a one year deferral of the start of catch-up payments required on the filing of valuation reports until the beginning of the next fiscal year;
- permitting greater flexibility in the use of actuarial gains to reduce annual cash payments by plan sponsors; and
- adopting the revised Canadian Institute of Actuaries' Standard of Practice for Determining Pension Commuted Values for solvency valuations.

Finally, the Government announced a number of measures that are intended to provide transparency and benefit security for members. These include, as we would expect, enhanced notice to active and retired members. However, they also include measures, some of which may present serious roadblocks for plan sponsors, that have not been reflected in similar funding regulations in other jurisdictions, including:

- accelerated funding of benefit improvements. It is not known how this requirement will affect previously agreed to benefit rate increases under such plans or whether the intention is to impose a funding schedule that is even shorter than the current five year schedule but in either case, accelerated funding for benefit improvements may preclude access to much needed relief for plan sponsors; and

- temporary limitations going-forward on contribution holidays where the plan actuary indicates the plan is no longer in a surplus position.

The proposed solvency funding relief is welcome news to Ontario plan sponsors and follows announcements in several other jurisdictions to provide much needed relief. At the same time, it is imperative that the regulations be tailored to deliver effective solutions for Ontario employers. Employers and sponsors will want to make their views known now, before the details of the required amendments to the *Pension Benefits Act* have been finalized.

Hicks Morley's Pension and Benefits Group will be monitoring the progress of this proposed legislation and would be pleased to work with you to develop submissions or to brief members of your organization on the proposed legislation. We will provide you with updates about the legislation on an ongoing basis. In the meantime, if you have any questions, please click here to contact one of the members of our Pension & Benefits Group.
