FTR Now

Solvency Funding Relief Details for Broader Public Sector Released by Ontario Government

Date: February 11, 2011

On February 10, 2011, the Ontario government released the Details of the Proposed Temporary Solvency Funding Relief for Certain Pension Plans in the Broader Public Sector ("BPS") (the "Details"). The government previously announced that it would consider providing solvency funding relief for pension plans provided in respect of BPS employers in the university sector on August 5, 2010. The stated goal of the proposed solvency funding relief is to support sustainable public sector and BPS defined benefit or hybrid pension plans, including Ontario university pension plans.

This *FTR Now* briefly summarizes the government's proposed Details of the temporary relief. The government will accept comments on the proposed Details until March 28, 2011. Despite this, plans with valuation dates in 2010 are required to file for Stage 1 relief by March 23, 2011.

PLANS ELIGIBLE FOR RELIEF

Based on the government's February 10th announcement, the temporary solvency funding relief will be available for eligible single-employer pension plans sponsored by the following public sector or BPS entities:

- the Crown in right of Ontario, a Crown agency, a corporation owned, operated or controlled by the Crown, and any other board, commission authority or unincorporated body of the Crown;
- a district school board;
- a person or entity that is a health service provider;
- a college of applied arts and technology;
- a university in Ontario, including its affiliated and federated colleges;
- a municipality; and
- a children's aid society.

The relief does not apply to multi-employer plans in the public sector or BPS.

Further, to be eligible, at least 25% of total plan membership as of the valuation date must consist of active members who continue to accrue defined benefits under the plan. Therefore, for example, existing "pre-OMERS" pension plans with very few or no active members would be ineligible for relief.

DETAILS OF THE PROPOSED RELIEF

As anticipated, the proposed relief will be provided in two stages. In exchange for the relief, eligible plan sponsors would be expected to adopt plan changes that would make their plans more sustainable in the long term. Plan changes could include (but are not limited to) the following:

- converting to joint sponsorship for future service;
- more equitable sharing of the normal cost of providing benefits between employers and members;
- linking some future benefits, such as inflation protection, to plan performance; and
- enhancing cost certainty and affordability through benefit adjustments that make plans more sustainable.

The government has acknowledged that this process could require “discussions” with collective bargaining agents who represent members of the affected pension plans. In fact, in cases where the pension plan forms part of the collective agreement and/or the collective agreement contains restrictions on plan amendments or sets out the plan formula or member contribution level, these changes may require collective bargaining with and/or the consent of the unions.

Additional conditions will also apply. These include special disclosure to members and retirees, stricter limits on contribution holidays and restrictions on benefit improvements.

According to the Details, the government will not provide additional funding to finance pension deficits.

STAGE 1 RELIEF

Under Stage 1 relief, eligible plan sponsors will be required file a valuation report with the Financial Services Commission of Ontario (“FSCO”), which will be designated as the Stage 1 Report. Plan sponsors will have three years from the valuation date of the Stage 1 Report to make appropriate plan changes that will make their plans more sustainable. The plan changes must enable the plan to meet actuarial “savings targets” that have been established by the government and are summarized in the Details documents.

During the three year period following the Stage 1 Valuation Date, no solvency valuations will be required to be filed with FSCO. For example, if the Stage 1 Valuation Date is December 31, 2010, no solvency valuation will be required until December 31, 2013.

Solvency payments established under pre-Stage 1 valuations will be suspended. However, plan sponsors will be required to make minimum payments throughout the three year period to ensure the existing solvency shortfall does not increase.

New going concern payments may be deferred up to 12 months from the date of the Stage 1 Report. Existing going concern payments will continue to be made based on previously established schedules.

At the end of Stage 1, plan sponsors will be required to prepare and submit to the Ministry of Finance another valuation report (the Stage 1 Progress Report) to demonstrate progress in meeting the applicable savings targets. The Progress Report will be required to be submitted no later than six months after the end of the Stage 1 period. If the Progress Report reveals that the plan changes will meet the savings targets, the plan will be considered for Stage 2 relief.

If a plan does not meet the eligibility criteria for Stage 2 relief, a new actuarial valuation must be filed with FSCO (also effective as at the end of Stage 1). The going concern and solvency special payments required to fund any unfunded liabilities or deficits revealed in that valuation will be amortized in accordance with the existing *Pension and Benefits Act* (PBA) funding schedules (15 years for going concern unfunded liabilities and five years for solvency deficits). The Stage 1 exit valuation will have to be filed no later than one year after the valuation date.

STAGE 2 RELIEF

If, based on the Stage 1 Progress Report, the Minister of Finance finds that substantial progress has been made in meeting the savings targets, the Details document indicates that the Ministry of Finance would recommend further funding relief to be provided to the eligible plan. The plan sponsor will be required to file a Stage 2 Valuation Report with 12 months from the end of Stage 1.

If accepted for Stage 2 relief, any solvency deficiency identified in the Stage 2 Valuation Report will be amortized over a period of no more than 10 years, with the first payment starting no later than 12 months after the date of the Stage 2 Valuation Report. Any additional solvency deficiency revealed in a report subsequent to the Stage 2 Valuation Report would be amortized over a period that is the longer of five years or the remaining period from the valuation date to the end of the 10 year Stage 2 period. Going concern unfunded liabilities will continue to be funded in accordance with the normal PBA timelines.

The government will require that the applicable plan changes identified during Stage 1 be fully adopted no more than five years from the effective date of the Stage 1 Progress Report.

A NOTE REGARDING JSPPS

For plans considering the possible conversion of a single-employer pension plan to a jointly sponsored pension plan (“JSPP”) as a possible step sponsors could take to obtain solvency funding relief, it is important to note that the PBA was recently amended to provide that existing

JSPPs will not be required to fund solvency deficits. Existing JSPPs were those JSPPs in existence on August 24, 2010.

In the Details, the government indicated that, although the exemption from the requirement to fund on a solvency basis applies only to existing JSPPs, plans that convert to JSPPs in respect of future service could be considered for relief from future solvency deficiencies. The details regarding the conditions or criteria the government might consider in order to provide relief from future solvency deficiencies have not been released. The Details also state that existing solvency deficiencies would still need to be addressed for plans that convert to JSPPs.

For sponsors entering into JSPP discussions, the Details indicate that consideration must be given by the parties to the need for agreement between the plan sponsor and the representatives of plan members on issues such as the plan's governance structure, sharing of gains and losses, funding policies and contribution rate stabilization reserves, and the way in which accrued benefits are addressed in the event of a plan wind up.

KEY DATES AND NEXT STEPS

1. APPLICATION DEADLINE MARCH 23, 2011 (VALUATION DATE BETWEEN tDECEMBER 31, 2009 AND DECEMBER 31, 2010)

Employers that intend to apply for the temporary solvency funding relief will be required to submit an application to the Ministry of Finance prior to filing the Stage 1 valuation report. Eligible pension plans with a valuation date between December 31, 2009 and December 31, 2010 must apply before March 23, 2011. The applicable deadlines for plans with valuation dates in 2011 or 2012 will be announced in the future.

2. CERTAIN VALUATION FILING DATES EXTENDED

For plans that must file their valuation reports on or before April 30, 2011, the PBA Regulations will be amended to extend the deadline for filing the valuation report to May 31, 2011 – which is intended to be after the necessary regulations for the relief measures are published.

3. CONTENT OF RELIEF APPLICATION

The Details set out the guidelines for the applications that must be submitted. The applications will be expected to set out the estimated savings targets and contain a detailed funding plan showing how the pension plan could be modified to be consistent with the goal of sustainability. The application is to identify prospective plan changes which could be introduced, or discussed with collective bargaining agents, during Stage 1.

Collective bargaining agents are to be identified in the application, as well as the number of members represented by each bargaining agent and the date any applicable collective agreements expire.

The application must include copies of all plan documents, amendments and valuation reports filed with FSCO since December 31, 1999.

The Ministry of Finance will consider whether an application satisfies the criteria for Stage 1 relief. If a plan is considered to have satisfied the criteria, the Ministry will make a recommendation that a regulation be made to provide the described funding relief. According to the government announcement, it is contemplated that the regulations will name those pension plans that receive the temporary solvency relief commencing in 2011.

The government is seeking comments on the proposed regulations by March 28, 2011.

4. STAGE 1 EXIT OR MOVE TO STAGE 2

No more than three years after the Stage 1 Valuation Date, a progress report must be prepared. This will determine whether the plan is eligible for Stage 2 relief.

MOVING FORWARD

Hicks Morley's Pension & Benefits Practice Group has been tracking the progress of this temporary relief over the past year. If you are a public sector or BPS employer and are considering making an application or wish to submit comments to the government regarding the proposed regulations, please contact Natasha Monkman at 416.864.7302 or any member of the Pension & Benefits Practice Group to discuss the temporary relief in greater detail.

We will continue to monitor the developments of these regulations and provide further updates throughout the year.

The government proposals can be found here.
