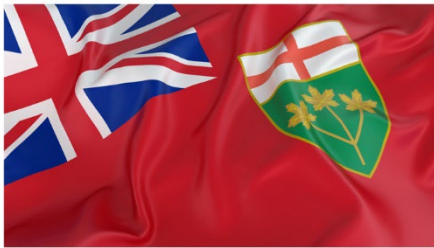


Briefing

Compliance News Affecting Pension Plans

September 2023

News from Ontario



Ontario's Second Consultation on a Permanent Framework for Multi-Employer Pension Plans

In March 2023, the Ontario Ministry of Finance (the Ministry) launched a consultation on proposed regulations to implement a permanent target benefit framework for multi-employer pension plans (MEPPs) registered in Ontario to replace the Specified Ontario Multi-Employer Plan (SOMEPP) framework that was set to expire on January 1, 2024. (See our [March 2023 Briefing](#).)

In response to stakeholder feedback, in July 2023, the Ministry [proposed](#) extending the SOMEPP framework to January 1, 2025 and in September 2023, the Ministry launched a second [consultation](#) on proposed regulations for a target benefit framework.

This *Briefing* presents an overview of the revised proposed new funding framework and conversion process. The main changes from the first consultation are:

- A plan specific provision for adverse deviations (PfAD) that follows the plan's funding and benefits policy
- A simplified conversion process
- Allowing plans to reduce commuted values by the plan's going concern funded status, if the terms of the plan permits
- A requirement for a communications policy

This second consultation also provides details about the Ministry's expectations of the regulations on benefit reduction and benefit improvement, introduces new reporting requirements and adds clarifications on wind-up and asset transfers.

Governance

The Ministry has proposed that the “funding policy” be renamed “funding and benefits policy.” In addition to following the Canadian Association of Pension Supervisory Authorities (CAPSA) guidelines, the funding and benefits policy must include:

- The method for determining the Provision for Adverse Deviations (PfAD)
- An explanation of how the PfAD, in conjunction with other actuarial methods and assumptions, supports the funding and benefits objectives
- An explanation of how the PfAD, in conjunction with other actuarial methods and assumptions, mitigates material risks

Plan administrators would also need to establish a governance policy that must contain, in addition to the CAPSA requirements, the systems and measures in place, such as the PfAD, stress tests and projections, to identify, quantify and manage material risks to the pension plan or pension fund.

If the final regulations follow the proposal, MEPPs will have one year after the effective date of conversion to establish and file their funding and benefits policy and governance policy documents with the Financial Services Regulatory Authority of Ontario (FSRA).

The administrator of the plan will be required to review the documents within three years from when the documents were established or last reviewed. Any changes to these policies will need to be filed with the FSRA within 60 days.

Communications

Under the proposed framework, plans will be required to establish and file a communications policy with the FSRA that would establish:

- Any additional information that should be included on statements to members, former members and retired members
- Any additional information that will be provided to individuals entitled to benefits and the method used to provide this information other than prescribed statements
- The processes for communication of relevant, timely and accurate information to individuals entitled to benefits, employer, trade unions and associations representing members of the plan

Plan administrators will have one year after the effective date of conversion to file their communications policy with FSRA and must review the document at least every three years. Any changes to this policy will need to be filed with the FSRA within 60 days.

Members' communications

The additional disclosures and information that must be made available to members, including disclosures in communications to new members, annual statements and communications regarding plan amendments is maintained, but the Ministry has removed from the proposals a requirement that annual statements include benefit adjustments over the past 10 years and the plan's transfer ratio.

The table on the next page summarizes the proposed communications that are in addition to those already required.

Required Member Communications	For New Members	For Current Members*
Explanation of how benefits provided under the plan are funded, including a statement that contributions to the plan are fixed and that benefits, including benefits already accrued under the plan, may be reduced	✓	
Summary of the plan's funding and benefits policy, including the processes that would be used to determine how benefits, including accrued benefits, will be reduced if contributions being made to the plan are not sufficient to meet the plan's funding requirements	✓	
Statement that the benefits provided under the plan are not guaranteed by the Guarantee Fund	✓	
Going concern funded ratio of the plan as of the valuation date of the most recently filed report	✓	✓
Explanation of the going concern funded ratio and a description of how it relates to the level of funding of members' benefits	✓	✓
If applicable, a statement indicating that upon termination of plan membership, the member may be entitled to elect a transfer of the commuted value of their deferred pension and that if required by the plan text, the calculation of the commuted value incorporates a reduction by the going concern funded status of the plan consistent with actuarial standards	✓	✓
Explanation of how the funding and benefits policy of the plan could affect the amount a member could receive in retirement relative to their accrued target benefit if the member were to transfer a pension benefit out of the plan at termination or at plan wind-up	✓	
Statement that the member's benefits, including accrued benefits and benefits provided on the death of the member, may be reduced while the plan is ongoing and upon wind-up		✓
The estimated going concern funded ratio calculated as of the end of the period covered by the statement		✓
If special payments are required in respect of any going concern unfunded liability, a statement to that effect		✓
Statement setting out the treatment of any surplus in a continuing plan and on wind-up and explaining that no employer is entitled to payment of surplus under the plan		✓
Statement that the member is entitled to inspect at FSRA or to receive a copy from the CEO of FSRA (after paying a fee) any of the following plan documents: funding and benefits policy, governance policy, communications policy, statement of investment policies and procedures and going concern funding rules		✓
* Information must be included in annual and biennial statements.		

Funding rules

As proposed in the first consultation, solvency funding for plans that convert to target benefits would be permanently eliminated. However, the Ministry's new consultation proposes some changes to going concern funding requirements, as noted below.

Provision for Adverse Deviations

Under both proposals, plans would be required to add a margin to their normal cost and ensure that their contributions can meet the existing funding requirements plus the margin. The margin is called a PfAD. The PfAD would be a percentage of the normal cost.

The original proposal included a PfAD determined based on a plan's investment risk plus an additional variable component that was tied to Bank of Canada bond rates which could have resulted in significant volatility from year to year.

Under the revised proposal, plan administrators would have the discretion to establish the plan's PfAD in compliance with their funding and benefits policy. The FSRA would assess whether the PfAD complies with the funding and benefits policy and may request information from the plan administrator or actuary to assess compliance.

Contribution sufficiency test

As initially proposed, the contribution sufficiency test would require contributions to the plan to be no less than the sum of:

- The normal cost of the plan
- The PfAD in respect of the normal cost
- Going concern special payments to fund an increase in liability and the associated PfAD on that increase related to plan amendments
- Going concern special payments determined in a valuation report not in respect of a plan amendment

Additionally, in the latest consultation, the Ministry proposes allowing plan to apply its going concern surplus to the contribution sufficiency test under the following circumstances:

- The plan assets available to be used to offset requirements in the contribution sufficiency test would be, at most, one-third of the **lesser of** plan assets in excess of 105 percent of the plan's going concern liabilities **or** plan assets in excess of 100 percent plus its PfAD percentage of the going concern liabilities of the plan.
- Annual valuation reports would be required if surplus is used to offset required funding.
- The use of surplus would be prohibited in the first valuation report after a new collective agreement affecting contributions to the plan has been implemented.

Special payments

Special payments, as referred to above, will continue to be calculated to remove deficits over a 12-year period. Further, each schedule of special payments will continue until that element of deficit is fully funded.

In particular, the Ministry has confirmed that no “fresh start” will be permitted and that, where positive experience eliminates part of a prior deficit, the balance of that deficit must continue to be funded at the same annual rate, albeit the number of required annual payments will be reduced.

Benefit reductions

The Ministry will issue regulations that would prescribe a process for equitable reductions in benefits, but not the specific process for benefit reductions. The specific process should be included in the plan’s funding and benefits policy.

The proposed regulations would mandate that:

- Liabilities for former members cannot be reduced by a greater percentage than for active members.
- The percentage benefit reduction for any former member cannot be more than twice the percentage benefit reduction of another former member.
- Benefit reductions cannot be made purely due to termination of plan membership or death, with the exception of reductions to commuted values by the going concern funded status, if permitted by the plan rules.

Benefit improvements

As proposed in the first consultation, benefit improvements would be permitted regardless of the plan’s going concern funded level and would be funded over 10 years.

Plans may apply surplus to fund the benefit improvement provided that, after the improvement, plan assets are greater than 105 percent of going concern liabilities and 100 percent plus the PfAD percentage of going concern liabilities.

Previously reduced benefits would be prioritized over other benefit improvements with the following conditions:

- Plan administrators would not be required to restore reductions made to future accruals before making other improvements.
- Any benefit improvement would not be allowed to increase liabilities for active members by a greater percentage than for former members.
- The percentage benefit increase for one former member cannot be more than twice the percentage benefit increase for another former member.

Reporting requirements

The proposed framework introduces additional disclosure requirements to be included at each valuation report. Each filed valuation report must include results of stress testing of each risk identified in the plan’s funding and benefits policy.

Commuted values

As proposed in the first consultation, MEPPs that can reduce benefits would be permitted to determine commuted values (CVs) using going concern discount rates as permitted by the Canadian Institute of Actuaries’ Standards of Practice.

The revised framework proposes allowing plans to reduce CVs by the going concern funded ratio provided the plan text has been amended. This would apply to CVs for terminating members and for purposes of determining the Family Law Value.

Plan wind-up

Under the proposed framework, the wind-up procedure for target benefit plans would be similar to the current procedure for MEPPs, with certain exceptions as follows:

- Retired members will have the option to transfer their commuted value to a prescribed retirement savings arrangement.
- There would be no requirement for contributions for shortfalls at wind-up. Benefits would be adjusted depending on available assets.

Asset transfers

Asset transfers between MEPPs are permitted under the *Pension Benefits Act* and the regulation. In the new proposed framework, assets related to target benefits under the original plan must be used to provide target benefits in the successor plan.

In addition, the amount transferred from the original plan would be based on the proportion of going concern liabilities transferred rather than solvency liabilities.

Multi-jurisdictional pension plans

The first consultation proposed prohibiting MEPPs to convert to a TBP if more than 10 percent of membership is in a jurisdiction that does not allow benefit reductions for MEPPs.

The Ministry has indicated that they would like to continue to engage with these plans to develop an approach that would limit the risk that Ontario members are disproportionately affected by benefit reductions.

Transition and conversion

The *Pension Benefits Act* sets out the process and timelines for plans to convert to target benefits. Plans would have five years from the effective date of the proposed framework to apply for consent to convert.

The requirement to provide notices to members of the proposed conversion has been removed. However, plan administrators are required to engage in good-faith consultation with participating trade unions and associations prior to applying for consent to convert.

Applications for consent to convert must contain the following documentation:

- A copy of the proposed plan amendment reflecting conversion
- A statement certifying that the administrator has consulted with any applicable trade union
- A statement from the administrator certifying that the eligibility criteria outlined in the *Pension Benefits Act* have been satisfied

The effective date of conversion is to be within 12 months of the date the FSRA consents to the conversion. Plans must file an actuarial valuation report within nine months of the effective date of conversion.

Action item


The Ministry is accepting comments on the proposed regulations until October 17, 2023. While this revised framework is an improvement, it will require a significant amount of work to implement all the proposed changes.

Trustees of MEPPs will need to start reviewing how best to implement this new regime, with a review of their current policies to determine the best course of action and, more importantly, determine the appropriate level of PfAD based on specific funding analysis, if the changes are adopted as proposed.



Segal can be retained to work with plan sponsors and their legal counsel on determining the implications. For assistance or if you have questions about the regulations and the law, contact your Segal consultant or [get in touch via our website](#).

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