



THE CANADIAN
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Via email: FIN.Pensions-Pensions.FIN@canada.ca

Lynn Hemmings
Director General
Financial Crimes and Security Division
Financial Sector Policy Branch
Finance Canada
90 Elgin Street
Ottawa, ON K1A 0G5

Dear Ms. Hemmings:

Re: A New Framework for Multi-employer Negotiated Contribution Pension Plans

I write on behalf of the Canadian Bar Association's Pensions and Benefits Law Section (CBA Section) in response to the Finance Canada consultation paper, **A New Framework for Multi-employer Negotiated Contribution Pension Plans** (the consultation paper). The CBA is a national association of 36,000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Section contributes to national policy, reviews developing pensions and benefits legislation and promotes harmonization. Our members are involved in all aspects of pensions and benefits law, including counsel who advise pension and benefit plan administrators, employers, unions, employees and employee groups, trust and insurance companies, pension and benefit consultants, and investment managers and advisors.

The consultation paper proposes a new funding framework for multi-employer negotiated contribution (NC) pension plans subject to the *Pension Benefits Standards Act, 1985* (PBSA) and its regulations. The proposed framework would remove solvency funding requirements, while maintaining going concern funding and adding additional safeguards to uphold benefit security of plan members and retirees.

Guiding Principles

The CBA Section proposes four guiding principles in considering potential changes to the funding framework for multi-employer NC plans:

1. **Sustainability** – robustness with respect to changing economic conditions, including sufficient flexibility to provide necessary counterbalances to economic shifts.
2. **Clarity** – legislative guidance on entitlements to and uses of plan funds.

3. **Harmonization** – alignment with rules in provinces and territories that have already engaged in solvency funding reform.
4. **Retirement Income Security** – pension issues are of national importance and improving the funding and security of pension benefits will facilitate a reliable retirement savings system for Canadians.

These principles are drawn from existing CBA policy, and we have advocated for their adoption in previous submissions to other regulatory bodies.¹ We encourage Finance Canada to adopt them in its further consideration of the proposed framework.

We organize our comments following the headings in the consultation paper.

Funding

Question 1: In the absence of solvency funding, should multi-employer NC plans be subject to a going concern buffer (i.e., PfAD) as part of an enhanced going concern funding standard? If yes, on what measure should the PfAD be calculated (e.g., ongoing concern liabilities, current service/normal costs)?

Question 2: Are there other funding models that could be considered for multi-employer NC plans under the new proposed framework without solvency funding? For example, should a shorter time horizon for amortizing going concern deficits be considered as an alternative to enhanced going concern funding?

The CBA Section endorses the proposed approach of exempting multi-employer NC plans from minimum solvency funding requirements. Eliminating solvency funding requirements will enhance the ongoing sustainability of multi-employer NC plans. We have long advocated for harmonization of pension legislation across Canada, particularly as it relates to funding matters. As comparable plans in several provinces are similarly exempt from solvency funding requirements, we welcome this proposal.

Promoting retirement income security is an important function of government. CBA Section members differ as to whether this policy objective would be achieved by introducing an enhanced going concern funding standard (e.g., PfAD) for multi-employer NC plans or other modifications to the existing going concern funding framework for multi-employer NC plans (e.g., reducing the period to amortize a going concern unfunded liability). This issue has been dealt with differently across Canada, with some jurisdictions opting for enhanced going concern funding requirements for these types of plans (e.g., Alberta, British Columbia and Saskatchewan) while others exempt the plans from enhanced going concern funding requirements (e.g., Ontario and Quebec).

Some CBA Section members believe that requiring a PfAD would promote sustainable contribution and benefit levels and reduce the risk of benefit reductions on plan termination. If a PfAD is imposed, we believe that it should, to the greatest extent possible, be principles-based to enable plan administrators to determine an appropriate funding buffer given the context of the plan, including factors such as plan maturity and investment performance. If a prescriptive PfAD is established, we endorse the approach taken in, for example, Saskatchewan, where absent benefit improvements, a PfAD is applicable only for current service costs. Our members who favour a PfAD also believe that reducing the amortization period for going concern unfunded liabilities would be effective in promoting sustainability and benefit security and suggest the 12-year amortization period allowed for specified Ontario multi-employer plans as a reasonable approach.

¹ [Funding and Security of Pension Benefits](#): Canadian Bar Association Resolution 10-02-M; Canadian Bar Association, [Improved Funding Framework for Nova Scotia Pension Plans: The Road Forward](#) (Ottawa: 2019).

Others in the CBA Section believe the longstanding history of Canadian multi-employer pension plans not being required to establish a PfAD illustrates that this approach has worked well. In multi-employer NC plans, contribution levels are fixed and often negotiated through a collective bargaining process. These CBA Section members are concerned that an increase to the going concern funding cost – inherent with the introduction of a PfAD – could necessitate benefit reductions. This could lead to significant benefit volatility, particularly as these plans transition into compliance with the new funding requirements. In this regard, these CBA Section members believe it would be appropriate to introduce a PfAD as an optional, principles-based plan design element, as opposed to being required and calculated based on legislation.

Given the different approaches across Canada for the going concern funding rules in multi-employer plans, there is the potential for inequities in the plans without a multi-jurisdictional agreement between the federal government and each province and territory with pension standards legislation. We encourage continued collaboration between the federal, provincial and territorial governments to create a new multi-jurisdictional agreement with an equitable and consistent approach to funding matters for these plans.

Question 3: In the absence of solvency funding, should the existing minimum threshold required for benefit improvements (solvency ratio of 0.85 after the amendment) be revised? What would be an appropriate threshold? For example, should the revised threshold be based on a going concern funding ratio?

It is prudent to have a minimum funding threshold for benefit improvements under multi-employer NC plans to ensure that any increase to benefits is sustainable. Again, CBA Section members differ as to whether the existing threshold (i.e., a solvency ratio of 0.85 or above after the amendment) adequately achieves this objective, or if benefit improvements should be permitted only if a plan is fully funded on a going concern basis. Those who would maintain the current threshold are concerned that, in certain scenarios, use of a threshold based on the plan's going concern funding ratio could potentially expose members to greater risk of benefit reductions on plan termination. Those favouring a departure from the existing threshold believe that benefit improvements should be permitted only where a multi-employer NC plan is fully funded on a going concern basis, as this threshold is better aligned with the intended approach of exempting such plans from solvency funding.

Funding Policy

Question 4: To encourage a strategic and transparent approach to funding, should multi-employer NC plans be required to establish and maintain a funding policy with the prescribed elements? In addition to what is considered above, are there any other elements that should be considered for multi-employer NC plan funding policies?

The CBA Section recommends that the administrator of a multi-employer NC plan be required to establish and maintain a funding policy. Considering the factors involved in a funding policy is useful when the administrator is not under pressure to make an imminent decision. This can help thoughtful consideration of the issues and avoid funding or benefit decisions made in haste without consideration of the interests of all classes of plan members.

We believe that the funding policy should cover at least the following areas mentioned in the consultation paper:

- funding objectives such as the level of funding that the administrator will target
- the main risks from a funding perspective and how they would affect benefits
- the guiding principles that the administrator would consider when deciding how to address a deficit and when and how to utilize a surplus

- considerations for any benefit improvement to ensure that any increased benefits are sustainable in the future or are extended for a temporary period only

The CBA Section recommends that the areas above be prescribed at a high level as required content for a funding policy, without requiring greater detail, so the administrator maintains discretion to apply the principles from the funding policy to suit the circumstances.

Portability

Question 5: What are your views on the current methodology used to calculate the individual termination value for multi-employer NC plans?

The current requirement to calculate commuted values for a multi-employer NC plan on a solvency basis encourages plan members to take a commuted value from the plan. It harms the plan's funded status and the members who remain in the plan.

As discussed, when a multi-employer NC plan is not funded to the required level, the plan administrator must either increase contributions or cut benefits. However, since contributions are set by a collective agreement, in practicality a reduction in benefits will almost always be the outcome. Paying out commuted values on a solvency basis, without regard to the funded ratio of the plan, essentially gives the terminated member who elects a commuted value transfer a windfall, treating them more favorably than continuing members of the plan who may be subject to benefit reductions. Paying out the terminating member's commuted value on a solvency basis then encourages plan members to take commuted values out of the plan to the detriment of the plan's funded status and the remaining members. It may also ultimately be to the detriment of the terminated plan member who will no longer have the security of a lifetime retirement benefit.

Accordingly, we support the initiative to calculate NC commuted values on a going concern basis and to adjust values based on the plan's funded status, to link the basis for commuted value calculation to the particular design and funding of a multi-employer NC plan. However, if a PfAD is implemented, in our view it should not be included when calculating commuted values on a going concern basis in order to maintain benefit security. The primary purpose of a pension plan is to provide retirement benefits, not to pay enhanced termination benefits, and members should be encouraged to leave their benefits in the plan to secure a lifetime retirement income. The revised method of calculating commuted values will preserve the benefit security of members who leave their benefits in the plan by resulting in fewer benefit cuts. It is fair that terminated members electing to leave should receive only their *pro rata* share of the assets available at that time.

Permitting commuted values for a multi-employer NC plan to be calculated on a going concern basis would resolve some inequities that have arisen in Canadian jurisdictions that already permit or require commuted values to be calculated in this way. For example, in British Columbia, multi-employer target benefit pension plans are funded on a going concern basis and require commuted values to be calculated using a going concern methodology and paid in accordance with the current funded ratio of the plan. However, to the extent that these plans have federal members, OSFI now requires that the commuted values of those federal members be calculated on a solvency basis according to the requirements of the PBSA. This puts the federal members in an inequitable position compared to other members of the plan and, depending on the number of federal members, can have a material impact on the plan's funded position. We support having this inequity resolved through the current initiative.

Question 6: What would be an appropriate approach to the calculation of commuted values in the absence of solvency funding requirements? For example, should plans be free to choose between different methodologies prescribed in regulation?

Subject to our comments above about not including any PfAD that may be required, the basis for calculating commuted values should match the basis on which the plan is funded (e.g. if a plan is funded on a going concern basis, then commuted values should be calculated on a going concern basis). Where a plan is funded strictly as a going concern, calculating commuted values on a solvency basis provides terminating plan members with an entitlement greater than their entitlement as a continuing member of plan. That gives terminating plan members a preference over continuing members, which, as discussed above, is contrary to a pension plan's primary purpose of paying retirement benefits and also creates inequity among plan members. As a general principle, plan administrators should not be free to choose a methodology for calculating a commuted value that does not reflect the way the plan is funded.

Governance Policy

Question 7: Would it be appropriate to require multi-employer NC plans to establish a governance policy with the minimum prescribed content? If yes, should the prescribe content align with the CAPSA Governance Guideline?

The CBA Section agrees that a new requirement to establish a governance policy is consistent with enhancing retirement security, as it generally promotes effective administration. For clarity, consideration should be given to balancing guidance and internal consistency in determining the content of such requirements.

For internal consistency, it is appropriate that these requirements be implemented at the multi-employer level. NC plans and multi-employer plans are subject to comparable rules under the PBSA, and a comparable rationale for a governance policy requirement can be made for both. Conversely, we do not see the rationale for establishing different governance requirements just for NC plans.

On the other hand, any new requirements should also reflect the fact that multi-employer plans are diverse. The governance needs of a multi-employer pension plan may differ based on how contributions are determined primarily (whether by participation agreement or collective agreement), the representative composition of the board, or the number and comparative size of participating employers.

The CBA Section endorses an approach that models these requirements after the CAPSA *Pension Plan Governance Guidelines* (Governance Guidelines), with consideration of the differences between multi- and single employer pension plans. For example, the Governance Guidelines do not specifically address participating employers, other than under the blanket term "stakeholder". On the other hand, since all multi-employer plans are administered by trustee boards, there may be opportunities for enhanced guidance in certain areas, such as determining board representation.

Disclosure

Question 8: To encourage more robust disclosure to plan members and retirees, should plan administrators be required to continue to report the solvency ratio of the plan and related information in its annual statements?

Question 9: Are there any other circumstances where new disclosures could be needed for NC plans, in addition to what is currently set out under the PBSA?

The CBA Section believes the solvency ratio may be important information for plan members and should be offered to members if it affects the benefits they receive or can expect to receive in future. For example, if the plan administrator intends to use the solvency ratio as a basis for making decisions, if the entitlement to amend the plan is conditioned on a certain minimum solvency ratio, or if the wind-up of the plan necessitates the purchase of guaranteed annuities, the solvency ratio

should be disclosed. However, if the solvency ratio does not drive member benefit entitlement or decisions about entitlement while the plan is ongoing or on wind-up, it may not be necessary to disclose it.

Additional Comments

As an additional consideration, we note that on wind-up, it may not make sense to provide retirees with a guaranteed annuity as a default. Given the nature of a multi-employer NC plan, the type of retirement annuity that better matches the nature of the risk taken by members is closer to a variable annuity. We suggest that the default for retirees be a variable annuity, but that retirees also have the options to purchase either a guaranteed annuity of equal cost to the plan or to receive that amount as commuted value transfer.

The CBA Section appreciates the opportunity to comment on the consultation paper. We trust that our comments are helpful and would be pleased to offer further clarification.

Yours truly,

(original letter signed by Gaylene Schellenberg for Jeff Sommers)

Jeff Sommers
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