Alberta Government

Interpretive Guideline #03
Defined Benefit Provisions

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This guideline is designed to summarize sections of the *Employment Pension Plans Act* (the Act) and the *Employment Pension Plans Regulation* (the Regulation) as they relate to defined benefit provisions. This guideline summarizes the legislative requirements which apply to the subject matter, and includes (as applicable) additional details to outline the Superintendent's expectations and requirements where such authority has been provided by the Act and Regulation. Finally, the guideline outlines best practices and policies that the Superintendent expects from provincially regulated pension plans.

The Act and Regulation should be used to determine specific legislative requirements. Any legal authority of this Guideline rests in the areas in which the legislation delegates authority to the Superintendent to accept a proposal or action.

What is a defined benefit provision

Section 1(1)(o) of the Act defines a defined benefit provision as a provision of the plan text document of a pension plan that establishes a formula by which the amount of the pension that is to be paid to a member is determined, but does not include a target benefit provision or a provision that is prescribed to be a "benefit formula provision".

Benefit Formula Requirements – General Requirements

Section 8(1)(e) of the Act requires that a plan text document must provide for benefits and entitlements on

- termination of active membership,
- death,
- pension commencement dates, and
- termination of the plan;

Section 14(3) of the Regulation states that the formula for determining benefits must be the same for

- every member that falls under a class of employment which is eligible for participation in the plan, and
- each future year of active membership.

Benefit Formulas – Adjustment for Canada Pension Plan / Quebec Pension Plan / Old Age Security

Section 76 of the Act provides that a plan text document may provide that a member may have his or her pension payments increased for a prescribed period by an amount determined by reference to amounts payable under the CPP Act, QPP Act, or the OAS Act. The increase in the monthly pension from the plan commences on the member's pension commencement date and ends on the date the member is entitled to receive an unreduced pension under CPP or QPP.

Section 76(3) of the Act, however, prohibits an offset to pensions, based on OAS entitlement, for service on an after January 1, 1987.

In respect to the maximum amount of reduction offset for CPP, QPP and OAS, section 76(4) of the Act and section 77 of the Regulation provides the formula for the limit.

The CPP/QPP formula is:

$$\frac{\text{(CPP + QPP pension) x (number of months of plan membership)}}{420}$$

Where:

- the amount of the CPP/QPP pension is that amount which is payable as at the member's termination of active membership, and
- the number of months of plan membership is not more than 35 years.

The OAS formula is:

$$\frac{\text{(OAS pension) x (number of months of membership up to Jan 1, 1987)}}{420}$$

Where:

- OAS pension is that amount which is payable as at the member's termination of active membership under the OAS Act, and
- the contribution period is the lesser of the number of months of plan membership, up to January 1, 1987, and 420

Finally, the amount of pension being paid under the plan cannot be reduced as a result of any future change to amounts being paid under CPP or QPP.

Funding Requirements

Section 45 of the Act obligates all participating employers to comply with the funding requirements applicable to the plan.

Section 52 of the Act further expands that the funding of a defined benefit provision must satisfy legislative requirements, and be made in accordance with the most current actuarial valuation report and cost certificate filed with the Superintendent. Specific funding requirements are contained in section 60 of the Regulation.

In the event the plan meets the definition of a negotiated cost plan, whereby contributions to the plan are determined by collective agreement, then the participating employer's liability, and if applicable, the active member's liability, in respect of funding is limited to the contribution rates set out in the collective agreement.

Lastly, in the case of a jointly sponsored plan, the funding requirements contained in the legislation apply equally to both the active plan members and participating employers, including the obligation for making special payments.

Use of actuarial excess to offset employer contributions

Section 65 of the Act and section 75 of the Regulation outline the permitted use of actuarial excess (defined, in this context, as going concern assets in excess of going concern liabilities). A summary of those sections is provided as follows:

- Unless the plan text documents specifically provide otherwise, DB actuarial excess may be used to reduce or eliminate required contributions from participating employer contributions. If a plan text document contains a DB and DC provision, actuarial excess may be used to reduce or eliminate participating employer contributions of the DC provision.

- If the Superintendent considers it appropriate to do so, the Superintendent may direct the administrator to cease using the actuarial excess to reduce or eliminate contributions.

- A reduction or elimination of contributions is only permitted if the plan's going concern asset value exceeds 105 per cent of the plan's going concern liabilities value, as determined in the current actuarial valuation report. This is called the plan's accessible going concern excess.

- No more than 20% of the plan's accessible going concern excess can be used each year, over a period not exceeding three years (or sooner, if a new valuation is prepared and filed).

- Use of the accessible going concern excess is not permitted if the plan has a solvency deficiency, nor may its use result in a solvency deficiency (i.e. the solvency ratio must remain at at least 1, and

- Disclosure of the use of the actuarial excess to reduce or eliminate contributions will be provided to members on the next annual statement.

Note that the plan may also use the actuarial excess by leaving it in the plan fund as a reserve against adverse experience, use it to increase benefits under the plan, or used in any other manner contemplated in the plan text document (which must also comply with the legislation).

Solvency Reserve Account

Section 54 of the Act permits a plan with a defined benefit provision to establish a solvency reserve account ("SRA") to hold contributions made in respect of a solvency deficiency under the provision. This type of account does not require member notification prior to the withdrawal of funds from the account. However, withdrawals are subject to certain conditions, and require the consent of the Superintendent.

Letters of Credit

Rather than making solvency deficiency special payments, a plan may, instead, choose to establish an irrevocable letter of credit which meets the requirements of section 55 of the Act

Remittance

Section 56 of the Act and section 68 of the Regulation require that the participating employer remits employer and employee required contributions, as well as any additional voluntary contributions or optional ancillary contributions made by the member, on a monthly basis. Contributions must be remitted within 30 days of the end of the month to which they relate or were received.

Contributions must be remitted to:

- in the case of a single employer plan, to the fund holder,
- in the case of a collectively bargained multi-employer plan, to the administrator, or
- in the case of a non-collectively bargained multi-employer plan, to the administrator or the fundholder as set out in the plan text document.

If the administrator is not also the fundholder, then after receiving the contributions from the participating employer, the administrator must promptly remit those amounts to the fundholder.

Under section 58 of the Act, contributions which are required to be remitted are deemed held in trust for the members until such time as they are remitted.

Commuted Value

Section 1(1)(k)(i) of the Act defines commuted value, under a benefit formula provision, as the actuarial present value of benefits determined in accordance with section 1(2), which states that the commuted value must be determined:

- based on actuarial assumptions and methods that are appropriate, and in accordance with generally accepted actuarial principles,
- in the prescribed manner, and
- in a manner acceptable to the Superintendent.

The commuted value represents the amount that must be provided to a member under a defined benefit provision in the following situations:

1. termination of active membership prior to the member reaching his or her pension commencement date, subject to restrictions on transfers imposed by the plan if the member terminates within 10 years prior to pension commencement,

2. termination of the plan, which can include retired members if the conditions in section 125(b) of the Act and section 145 of the Regulation are satisfied,

3. death of the member before reaching his or her pension commencement date,

4. marriage breakdown where a matrimonial property order (MPO) or matrimonial property agreement (MPA) requires the division and transfer out of the ex-pension partner's share, or

5. conversion of a defined benefit provision to a defined contribution provision or vice versa.

Section 9 of the Regulation sets criteria for determining commuted values. For defined benefit provisions, the commuted value must be determined in accordance with the standards of practice issued by the Canadian Institute of Actuaries, as amended from time to time.

The date in which the commuted value is determined depends on the date the entitlement to a benefit is finalized. Under sections 9(3) and (4) of the Regulation (i.e., the date of termination of membership, retirement, termination of the plan, death, the date specified as the date of marriage breakdown in the MPO/MPA, or the date of plan conversion).

Except for recalculations as outlined in section 9(5) or 82(14) of the Regulation, the use of any other date requires the Superintendent's approval.

To be acceptable to the Superintendent, the commuted value must reflect the full value of the benefit entitlement that the member had earned on the date of calculation, accrued to that member in accordance to the provisions of the plan. This would include:

1. the value of the normal form of pension;

2. the value of any death or survivor benefits payable on death prior to commencement of pension; and

3. the value of any ancillary benefit the member has fully qualified for, in accordance with the provisions of the plan text document.

In accordance with section 73(3) of the Regulation, a commuted value must be adjusted with interest between the computation date and the end of the month immediately preceding the date of payment. The interest applied must be at least equal to the rate of interest that was used in determining the commuted value of the benefit at the computation date.

If, however, more than 180 days has passed between the date of calculation and the date of payment, section 9(5) of the Regulation requires that the commuted value be recalculated. The recalculation date cannot be more than 30 days prior to the transfer date.

If, at the date of payment, the plan has a solvency ratio less than 1.0, the plan administrator may initially transfer to the member only the funded portion of the benefit (calculated as the product of commuted value and the solvency ratio).

The balance which remains unpaid, and related to the member's benefit entitlement, must continue to be held as a liability under the plan. This transfer deficiency must be transferred, with interest, within no more than 5 years of the initial transfer.

There is no requirement to apply a hold-back to the payment of the benefit in situations where the participating employer immediately and fully funds the amount of the transfer deficiency related to the member's benefit.

Excess Contributions

If the plan requires member contributions, and unless the plan is a jointly sponsored plan, section 57 of the Act states that the member must not have contributed more than 50 per cent of the cost of their own benefit as determined at the date of cessation of membership.

These excess member contributions are payable at termination, retirement, death, or on termination of the plan. In situations where either:

- a member terminates active membership, but elects a deferred pension from the plan, or
- the member's benefits are converted from defined benefit to defined contribution,

and if the plan text document so provides, the member excess contributions may be recalculated as at the member's pension commencement date, and the distribution of those amount delayed until that future date.

Investment and Contribution Requirements

Sections 62 of the Act and 72 of the Regulation set out the rules for the investment of pension plan assets, which includes the requirement that the assets of a plan must be invested, and the investments must be made, in accordance with Schedule III of the federal *Pension Benefits Standards Act*.

Employment Continues after Pension Eligibility Date

Where a member reaches the plan's pension eligibility date, the plan text document must provide that a member will continue to accrue benefits under the plan in the same manner and to the same extent, as he or she was accruing before that date, for as long as that person remains a member of the plan.

Despite this, the plan text document may also provide for any, or all, of the following additional options.

- The member may elect, in writing, to cease accruing benefits and may instead start to collect his or her pension,
- The member may elect, in writing, to cease accruing benefits and to delay the start of his or her pension until a later age, in which case, the pension must be actuarially increased to reflect the delay, and
- To the extent permitted under the *Income Tax Act*, to start receiving a pension and to continue accruing benefits under the plan. Typically, this scenario results from a member ceasing to accrued a defined benefit, and would (instead) accrue benefits under a defined contribution provision of the plan.

Where the plan text document provides for more than one option, the member is only permitted to select one.

Retired Member Return to Work

Section 15 of the Regulation applies in situations where a retired member returns to covered employment which is eligible for participation in the plan. Where the plan has retired members, the plan text document must provide for one, or more, of the following:

- Payment of the pension is to continue, in which case, the retired member is not eligible to re-enrol in the plan,
- Payment of the pension is suspended, and the retired member re-enrols in the plan and accrues additional benefits, or
- To the extent permitted under the *Income Tax Act*, to start receiving a pension and to continue accruing benefits under the plan. Typically, this scenario results from a member ceasing to accrued a defined benefit, and would (instead) accrue benefits under a defined contribution provision of the plan.

Where the plan text document provides more than one option, the retired member is only permitted to select one.

Additionally, section 15(4) of the Regulation provides that the plan text document may provide that different options will apply in different circumstances, subject to the Superintendent's consent. One common example is where:

- a retired member, who is younger than the plan's pension eligibility date, returns to covered employment. The plan text may specify that member will have his or her pension suspended and will accrue additional benefits, or

- a retired member, who is at or older than the plan's pension eligibility date, returns to covered employment. The plan text may provide in that instance, the retired member is not permitted to re-enrol in the plan and the pension for that individual continues.

Where the pension is suspended, and the retired member accrues additional benefits during his or her period of re-employment, the pension payable at the retired member's subsequent retirement date must be adjusted in accordance with the provisions of section 15(6) of the Regulation.

Superintendent may refuse amendment

If a plan text document, which contains a defined benefit provision, is amended, the Superintendent may refuse to register the amendment if the effect of the amendment would be to reduce to solvency ratio of the defined benefit provision to below 0.90.

Disclosure

Section 37 of the Act requires that members, surviving pension partners, former pension partners and designated beneficiaries are entitled to information as outlined in the Regulation.

Sections 30 to 46 of the Regulation provide details of what must be disclosed in the various statements and information provided to the required individuals.

For further information please contact:	
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