CONSULTATION PAPER
THE PENSION BENEFITS ACT REVIEW

January 2018

Manitoba

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Department of Finance

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Part 1 – Introduction

Employer pension plans are an important retirement income source established by employers to provide lifetime pension income in retirement to their employees, known as the “pension promise”.

The fundamental policy objective with respect to funding standards for these plans is to create a stable retirement income system to enhance the well-being of older citizens.

Under *The Pension Benefits Act* (PBA), the Pension Commission of Manitoba (Commission) must review the PBA at least once every five years and report its findings and recommendations (commission’s report) to the Minister of Finance.

The Commission undertook a review of the PBA that focused on new plan designs, solvency deficiency funding rules, locking-in provisions and access to locked-in pension funds, compulsory pension plan membership, division of pensions on relationship breakdown and clarification/legislative gaps.

The commission’s report may be accessed at **Commission’s Recommendations for Reforms to The Pension Benefits Act.**

Feedback from individuals, pension plan sponsors, pension consultants/actuaries, financial institutions and industry organizations on the discussion questions raised in this Consultation Paper and the recommendations in the commission's report are welcome.

Part 2 – How to participate

Submissions on the discussion questions in this Consultation Paper and recommendations in the commission's report may be submitted electronically to pensions@gov.mb.ca. Written submissions can be sent to the following address:

Office of the Superintendent – Pension Commission
Room 1004 – 401 York Avenue
Winnipeg MB R3C 0P8

The closing date for submissions is February 21, 2018.

Part 3 – New plan designs

Target benefit pension plans (TBPPs) and shared risk pension plans (SRPPs) refer to types of pension plans designed to provide cost certainty with a defined benefit pension plan (DB Plan) promise.

Under these new plan designs, employee and employer contributions are established at a fixed level or range, often collectively bargained. The employer's liability is limited to the fixed contribution amount.

These new plan designs specify a target pension with no guarantee that the pension provided at retirement will equal the target amount. The actual benefit is determined based on affordability with the ability to increase or decrease benefits.

If contributions are not sufficient to maintain the target pension, contribution rates may be increased and accrued benefits (whether in payment or not) decreased.

These new plan designs are generally exempt from solvency funding but are subject to more stringent going concern funding.

In 2012, New Brunswick amended its pension legislation to permit SRPPs. While similar to a TBPP, the SRPP has some unique differences. In general, it provides a minimum/base target pension with the ability to adjust benefits up or down based on pre-set levels. Contributions are based on legislated funding requirements.

Alberta amended its legislation to permit TBPPs in 2014 and British Columbia in 2015. In 2016, the Federal government introduced amendments that would permit TBPPs that are similar in many respects to a SRPP. Nova Scotia introduced legislation in 2011 that permits TBPPs to be established in unionized settings. Its legislation has not been proclaimed into force. Ontario adopted a similar approach. Ontario's legislation has not been proclaimed.

Discussion questions

1. Should Manitoba develop a regulatory framework for a new target benefit or shared risk pension plan design?
2. If so, should a target benefit or a shared risk pension plan framework be developed?
3. Should the new plan design be available to both single employer and multi-employer plans, and both private sector and public sector plans?
4. Should the new plan design be restricted to unionized environments?
5. Should conversion to the new plan design be permitted for future benefit accruals only?
6. If conversion of existing benefits is permitted, should union or member consent be required?

Part 4 – Solvency deficiency funding rules

There are 78 DB Plans registered in Manitoba.

Like most jurisdictions, Manitoba requires that DB Plans are valued and funded on both a going concern and solvency basis. The going concern basis assumes the plan continues indefinitely. Going concern deficiencies must be funded over a 15-year period. The solvency basis assumes the plan terminates and all benefits are settled. Solvency deficiencies must be funded over a five-year period.

Solvency funding rules were introduced in Manitoba effective April 30, 1999. The intent of solvency funding is to increase benefit security for DB Plan members in the event of a plan being underfunded if the plan wind-ups and the employer is insolvent. However, even with solvency funding, there is no guarantee that a plan will be fully funded if an employer becomes bankrupt.

Market downturns over the last decade and changing demographic conditions have led to increased solvency payments imposed by the current solvency funding rules. In some cases, this has created significant funding challenges for plan sponsors who shoulder the funding risk inherent in DB Plans.

While the markets have made a significant recovery since 2007-2008, long-term interest rates used to determine solvency liabilities have fallen and remain low and demographic changes such as increases in life expectancy have continued to negatively affect the solvency position of some DB Plans. This has created funding challenges for some plan sponsors.

To assist plan sponsors, most jurisdictions have implemented a variety of temporary solvency relief, moratorium or permanent exemptions for all, or certain plan types (normally public sector or multi-employer/collectively bargained plans). Many of these measures still exist today.

Current relief measures in Manitoba include a regulation amendment that permits plan sponsors to elect, for the first valuation date between December 30, 2016 and January 2, 2019, to consolidate and amortize existing solvency deficiencies over a single, new, ten-year period with member buy-in. Regulation amendments also permit specified public sector plans and non-profit sector plans to elect a permanent exemption from solvency funding, and four plans to elect a temporary solvency funding moratorium.

Quebec eliminated solvency funding for all DB plans effective January 1, 2016 and replaced it with enhanced going concern funding requirements. The new funding regime requires that existing going concern deficiencies are consolidated at each valuation date and funded over 10 instead of 15 years, a "Stabilization Provision" (funding required to protect the plan against unexpected situations), and a "Banker's Clause" (holds certain employer contributions until they are used to fund deficits or withdrawn as surplus subject to certain conditions). It also changes the commuted value calculation on termination of membership and puts limits on benefit improvements.

The Financial Services Commission of Ontario announced in 2017 that it would be replacing solvency funding with enhanced going concern funding. The new funding regime involves shortening the going concern amortization period from 15 years to 10 years, consolidating existing deficiencies into a new deficiency at each valuation date, funding of a reserve within the plan called a Provision for Adverse Deviation (PfAD) to manage future risks, and requiring solvency funding if the plan's solvency ratio falls below 85%.

Nova Scotia released a consultation paper in September 2017 on a new funding framework for DB Plans. The consultation period ended November 10, 2017.

The focus of Manitoba's current review of the funding framework for DB Plans is to develop a balanced set of solvency funding reforms that focus on plan sustainability, affordability and benefit security that takes into account the interests of pension stakeholders – including pension plan sponsors, unions, members and retirees.

Possible options for a DB Plan funding framework in Manitoba are set out below.

Option 1 - Eliminate solvency funding and enhance going concern funding

Solvency funding could be eliminated completely or in part and replaced with a regime that requires enhanced going concern funding. Going concern funding assumes a plan will continue indefinitely. The going concern liability, does not represent the real cost of paying out the promised benefits for plan members at a particular time. For this reason, eliminating solvency funding requirements should be accompanied by strengthened going concern funding.

Consideration could be given to one or more of the following enhanced going concern funding approaches if solvency funding is eliminated in whole or in part.

Approach A – Shorten the amortization period
Shorten the current 15-year going concern amortization period over which deficiencies must be funded (e.g. 10-years).

Approach B – Require a provision for adverse deviation (PfAD)
Require funding of a PfAD, which is an amount in excess of a plan's liabilities that must be funded before the plan may take action such as benefit improvements that could weaken the plan's funded position.

Approach C – Solvency trigger for enhanced funding
Use a plan's solvency ratio to determine whether additional funding is needed or if the plan would be allowed to take action that would weaken its funded position. For example, if the plan's solvency ratio falls below a certain threshold of solvency (e.g. 85%), additional funding requirements would be triggered until the solvency ratio reaches a certain threshold (e.g. 85%).

Approach D – Consolidation of deficiencies
Consolidate existing deficiencies into a new deficiency at each valuation date.

Option 2 – Introduce solvency reserve accounts

Permit solvency reserve accounts (SRAs) as a separate account within a pension plan fund established to hold solvency deficiency payments greater than those required to meet the plan's solvency funding obligations in respect of a solvency deficiency.

Funds in the SRA could be used to fund shortfalls or, with the consent of the Superintendent, the employer could withdraw up to a prescribed maximum when the solvency ratio exceeds a certain threshold in excess of 100% (e.g. 105%). Employer withdrawals would be permitted irrespective of a plan's provisions. Upon plan wind-up and the settlement of all benefits, any remaining assets in the SRA would go back to the employer.

Option 3 – Eliminate solvency funding

Eliminate solvency funding entirely without making any changes to the going concern funding requirements.

Option 4 – Maintain the current solvency funding rules

Maintain the current going concern and solvency funding requirements.

__Discussion questions__

7. Are any of the above options reasonable and practical in a Manitoba context?
8. If so, which option or combination of options described above would be most effective in balancing the different interests of plan sponsors, unions, members and retirees?
9. If a regulatory framework based on option 1 is developed, which approach or combination of approaches described under option 1 should be considered?
10. If the 100% solvency threshold is reduced to require partial funding, is a threshold of 85% appropriate? If not, what should the threshold be?
11. Are there any other reforms to the funding framework that should be considered?

Part 5 - Locking-in provisions and access to locked-in pension funds

Pension plans are established by employers to provide lifetime pension income in retirement to their employees, known as the “pension promise”.

All jurisdictions permit pension funds to be unlocked under certain conditions. Only the amount that can be unlocked and the conditions for unlocking varies.

Manitoba’s legislation is generally consistent with other jurisdictions. In Manitoba, the locking-in exceptions for Locked-in Retirement Accounts (LIRAs) and Life Income Funds (LIFs) involve:

- small amounts of less than 40% of the Year’s Maximum Pensionable Earnings ($22,360.00 for 2018);
- shortened life expectancy of less than two years;
- Canadian non-residency of two years or more; and
- LIF owners who are at least age 55 may apply for a one-time transfer of up to 50% of the balance in his or her LIFs to a RRIF that is not locked-in.

All jurisdictions permit pension funds to be unlocked in the event the fund is considered a small benefit, subject to certain conditions that vary by jurisdiction.

Every jurisdiction permits pension funds to be unlocked in the event of shortened life expectancy. The definition of shortened life expectancy varies by jurisdiction. In general, Manitoba, Nova Scotia and Ontario require that the life expectancy be less than two years. New Brunswick, Ontario, Quebec and the Federal government permit pension funds to be unlocked in the case of mental disability and physical disability.

All jurisdictions permit funds to be unlocked in the event of non-residency as determined under the *Income Tax Act* (Canada).

Partial unlocking, subject to certain conditions that vary by jurisdiction, is permitted in all jurisdictions except one. Saskatchewan is the only jurisdiction that permits full unlocking at retirement.

Alberta, British Columbia, Nova Scotia, Ontario and the Federal government permit pension funds to be unlocked in the event of financial hardship, subject to certain conditions that vary by jurisdiction.

Discussion questions

12. Should Manitoba develop a regulatory framework to permit locked-in funds to be accessed due to financial hardship? If so, under what conditions?
13. Should other reforms to the locking-in provisions in the PBA be considered?

Part 6 – Compulsory pension plan membership

Under the PBA, full-time employees are required to join the pension plan upon satisfying the service criteria for determining compulsory membership, which cannot exceed two years.

Non full-time employees are required to join the plan upon satisfying the service criteria for determining compulsory membership for full-time employees and one of the following:

- 700 hours of employment with the employer in each of two consecutive calendar years;
- earnings of not less than 35% of the Year's Maximum Pensionable Earnings in each of two consecutive calendar years; or
- satisfying the earliest of the above hours or earnings criteria.

Students, members of religious groups, employees hired before 1984 or the effective date of the plan if later, and employees receiving pensions that return to work for the same employer, are exempt from the compulsory membership requirements.

Discussion questions

14. Should Manitoba continue to require compulsory pension plan membership as a condition of employment where there is a pension plan in effect?
15. Should members be permitted to opt out of plan membership?
16. Should members be able to set their contribution rate to 0% if a specified period has passed since they started contributing to the plan (e.g. 12 months)?

Part 7 – Division of pensions on relationship breakdown

Under the PBA, where there is a court order under *The Family Property Act* (FPA) or a written agreement regarding a division of family property, the administrator must divide the pension or pension benefit credit accumulated during the marriage or common-law relationship on a 50/50 basis regardless of the provisions of the order or agreement. The parties may opt-out of the 50/50 division in the manner prescribed by the PBA.

Manitoba is the only jurisdiction who requires that the pension earned during the period of the relationship be divided equally, regardless of an agreement or court order to the contrary. All other jurisdictions permit the parties under the FPA to determine the portion of the pension to be divided, subject to the spouse or common-law partner receiving no more than 50% of the pension earned during the period of the relationship.

Discussion questions

17. Should the current framework requiring a mandatory 50/50 division of the pension earned during the period of the relationship be maintained?
18. Should the current framework be amended to permit parties to determine the portion of the pension to be divided, subject to the spouse or common-law partner receiving no more than 50% of the pension earned during the period of the relationship?

Part 8 – Clarification/legislative gaps

Other matters for discussion are set out below.

Discussion questions

19. For plans not already designated as a multi-unit pension plan (MUPP), is it reasonable in a Manitoba context to replace MUPPs with multi-employer pension plans and specified multi-employer pension plans, consistent with the provisions in other jurisdictions and the *Income Tax Act* (Canada)?
20. Should the provisions setting out when an individual ceases to be an active member of a DB Plan be amended to provide that a member can choose to suspend membership and contributions at normal retirement age (normally age 65) while remaining employed, and upon subsequent commencement of a pension, receive the actuarially increased value of the pension accrued to age 65?
21. Should the provision setting out entitlement to ancillary benefits be amended to clarify when an ancillary benefit is vested and must be included in the calculation of commuted values?
22. Should the pension committee requirements be amended to clarify that if there is no inactive member in the plan, or no inactive member willing to be on a pension committee, the inactive member position can remain vacant?

Part 9 – Glossary of pension terms

Accrued Pension - Amount of pension earned up to a given date by a member according to employment, earnings, etc.

Ancillary Benefits - Benefits in addition to regular pension benefits. Examples include bridging benefits (additional benefits paid until CPP or OAS commences) and enriched early retirement benefits (an example is the Rule of 80 that provides an unreduced pension if age and service equals 80).

Going Concern Funding - Determination of the funded status of the plan on the basis that the plan continues indefinitely. Any shortfall (unfunded liability) must be funded over 15 years.

Life Income Fund (LIF) - A RRIF that is subject to the locking-in requirements of the PBA. A LIF provides the owner with income each year subject to certain minimum and maximum withdrawal rules.

Locked-In - Legislative requirement that pension benefits cannot be withdrawn as a lump sum and must be used to provide lifetime retirement income.

Locked-In Retirement Account (LIRA) - A RRSP that is subject to the locking-in requirements of the PBA. A LIRA holds pension funds on a locked-in basis, meaning they cannot be withdrawn or cashed out, until they are transferred to a LIF or to an insurance company to purchase an annuity.

Member - An employee or former employee who is accruing, entitled to, or receiving a pension under the plan.

Multi-Employer Pension Plan (MEPP) - A plan established by a trade union or association in which more than one employer in the industry participates. Participating employers pay contributions into a common fund, often on a cents-per-hour basis.

Multi-Unit Pension Plan (MUPP) - A plan designated as a MUPP under the PBA. A MUPP is established by one or more employers in co-operation with two or more unions or associations and may cover non-unionized employees as well as unionized employees.

Plan Wind-up - Occurs when a pension plan ceases to operate and all benefits are settled.

Solvency Deficiency - Any amount by which the plan's solvency liabilities exceed the solvency assets as of the valuation date.

Solvency Funding - Determination of the funded status of the plan on the basis that the plan terminates on the valuation date. Any shortfall (solvency deficiency) must be funded over five years.

Solvency Ratio - The ratio of the plan's assets to the plan's liabilities, determined on a solvency funding basis.

Specified Multi-Employer Pension Plan (SMEPP) - A multi-employer plan where employer contribution rates are negotiated under a collective agreement and contributions are based on hours worked by employees.

Unfunded Liability - Any amount by which the assets of a pension plan are less than its liabilities on a going concern basis.

Valuation Date - Pension plans must be reviewed by an actuary every three years, unless the solvency ratio is less than 0.9, in which case the plan must be reviewed every year.

Year's Maximum Pensionable Earnings (YMPE) - Employment earnings on which Canada Pension Plan contributions and benefits are calculated. The YMPE is changed each year according to a formula based on average wage levels. The YMPE for 2018 is $55,900.00.