

## **Federal Pension Legislation Changes**

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The federal Minister of Finance has announced a number of reforms to the federal Pension Benefits Standards Act, 1985.

Most apply only to federally regulated pension plans. These comprise only 7 per cent of pension plans in Canada.

The reforms include full funding on plan termination, a 5 per cent solvency margin before contribution holidays may be taken, a restriction on benefit improvements when the plan is less than 85 per cent funded, elimination of partial wind ups, use of average solvency ratios to determine funding requirements, the use of letters of credit to the extent of 15 per cent of plan assets, the increase in the pension surplus threshold in the Income Tax Act to 25 per cent from 10 per cent, a framework for defined contribution and negotiated contribution defined benefit plans, as well as a number of other minor measures. They are on the whole helpful to both plan members and employers, and worthwhile.

The most interesting feature of the announced reforms is the establishment of a workout regime that is intended to be of assistance to employers in financial difficulties who cannot meet their near-term funding requirements. Funding requirements can push an employer into insolvency, which may not be the best resolution for any of the stakeholders, and can be seriously prejudicial to plan members.

In two recent insolvency situations, Air Canada and Stelco, the federal and Ontario governments respectively enacted special regulations to deal with the funding of the company's underfunded pension plans. In both cases, the funding of the plans had contributed to the insolvency. The federal proposals appear to be intended to address the funding problem before it triggers an actual corporate insolvency. The federal government, and a number of provincial jurisdictions, have already enacted regulations permitting solvency funding over 10 instead of 5 years.

The details of the new federal scheme, and how it will work in practice, remain to be seen. Other means of protecting plan members in insolvency situations are being discussed in the industry and by governments. One suggestion is to give additional priority to special and solvency payments to the pension plan in an insolvency. It is of note that a superpriority for (a) deducted but not paid member contributions and (b) normal costs, was newly included in the 2008 amendments to the Bankruptcy and Insolvency Act. Another solution is that proposed by

Quebec for the Quebec Nortel plan members; that is, for a government agency to take over the administration of a pension plan for a period of time sufficient to allow the investments of a plan to recover before it is wound up. A third solution is to establish, or in the case of Ontario to increase, coverage by a pension benefit guarantee fund.

A package of pension reforms is expected to be announced by Ontario shortly, and reform packages from other jurisdictions have been announced or are imminent. It would be helpful for the federal and provincial governments to act together in pension reform, instead of further exacerbating the lack of harmonization in pension legislation across Canada. The political will to do so has hitherto unhappily been lacking.

We look forward to the results of the Report of the Federal/Provincial/Territorial Working Group on Retirement Income Adequacy to the Ministers of Finance and Ministers Responsible for Pensions, to be discussed later on this month in Whitehorse. There are serious issues of pension coverage in Canada and of benefit security. At least (and at last) the governments are talking.

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This article is intended for general information purposes only and should not be relied upon as legal advice.

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