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The Association of Canadian Pension Management
L'Association canadienne des administrateurs de régimes de retraite

November 14, 2024

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RE: Regulations Amending the Pension Benefits Standards Regulations, 1985 Solvency Reserve Accounts and Multi-Employer Pension Plans

ACPM is the leading advocacy organization for plan sponsors and administrators in the pursuit of a balanced, effective and sustainable retirement income system in Canada. We are the voice of retirement plan sponsors, administrators and trustees in both the private and public sectors and our membership represents retirement income plans that cover millions of plan members.

We welcome the opportunity to comment on the draft Regulations Amending the Pension Benefit Standards Regulations, 1985 in respect of Solvency Reserve Accounts (SRAs) that were first announced in the 2022 Budget, and Multi-Employer Pension Plans (MEPPs) that were announced later. ACPM strongly supports the introduction of SRAs, as they will be an important step towards promoting the retention of DB plans and supporting retirement security for plan members and retirees. SRAs were the subject of previous consultations and ACPM expressed its views, notably in our January 14, 2021 response to the consultation on *Strengthening Canadians' Retirement Security - Proposals to Support the Sustainability of and Strengthen the Framework for Federally Regulated Private Pension Plans (2021 Consultation Paper)*. Reviewing our comments in the 2021 Consultation Paper may be helpful as some of them overlap with issues in the draft regulations.

Our comments below on the draft regulations to implement SRAs are based on our understanding of the intent of what an SRA is and is intended to accomplish, as announced in the 2022 Budget, which includes:

1. An SRA would be a notional account within the defined benefit pension fund or a distinct account established as:
    a. a separate trust or funding instrument, or
    b. a custody or sub-account within the existing trust or funding instrument;
2. An employer could remit solvency special payments and amounts in excess of the amount necessary to meet the standards for solvency to the SRA.
3. Subject to certain annual maximums, the employer would be entitled to recover up to the entire amount held in the SRA when the plan has a sufficient surplus, without being subject to the refund of surplus mechanisms under the PBSA (Section 9.2) and without being required to establish employer entitlement to such surplus under the plan terms; and
4. The SRA would provide another option for making solvency special payments via a letter of credit (LC) and largely be treated analogously to the LC regulations.

Our specific comments are aimed at ensuring that the above intent is reflected in the regulations and are as follows:

9.21 - Establishment of an SRA

Section 9.21(1) states that "A plan that provides for the establishment of a solvency reserve account in the plan's pension fund must set out" the determination of interest on the SRA, the payment of benefits and the treatment of gains and losses. This requirement implies that it is necessary in all circumstances to amend a plan to provide for the establishment of an SRA. We believe this should not be the case. Specifically, where an SRA is established as merely a sub-account or notional within the existing trust or funding instruments, no amendment to the plan terms should be necessary to effect the SRA. Moreover, some terms of the plan afford the employer sufficient flexibility to establish the funding instrument for the plan, and in such cases a specific amendment may not be needed. Rather, we think an amendment to the plan terms should only be necessary where the plan terms explicitly or implicitly prohibit the establishment of an SRA. This approach would be consistent with the intent that SRA be another funding option, similar to an LC, which solely requires that the funding of the plan be in compliance with the PBSA and its regulations.

Regarding subsection 9.21(1)(a) and (b), the default should be that the interest of the SRA be at the fund rate of return and the payment of benefits be outside of the SRA. The regulations should specify this as a default unless the plan documents provide otherwise.

With this approach, the establishment of an SRA would be simplified and uniform unless the plan terms prohibit the establishment of the SRA in the chosen form. Thereafter, if the employer makes solvency payments or contributes in excess of required contributions, it would become a disclosure in the actuarial report.

While we recognize that the charging section of the PBSA, section 9.17, permits a plan to provide for the establishment of an SRA, it does so subject to the regulations, and we think the regulations could limit the requirement for the plan to expressly permit an SRA to circumstances where the plan terms do not otherwise permit the establishment of an SRA. Moreover, requiring plans to be amended would only further delay the implementation of SRAs and may impede some employers from using them all together.

9.22 – Payments into an SRA

Sections 9.22(a) and (b) are clear that solvency special payments, solvency payments under a workout agreement and payments made subsequent to the termination of a plan may be made to an SRA. However, Section 9.22(c) is vague in that it permits "any amount paid into the plan that exceeds the amount necessary to meet the standards for solvency and that is not required under subsection 29(6) or (6.1) of the Act" to be made to an SRA.

Section 8 of the PBSR states "The funding of a plan shall be considered to meet the standards for solvency if the funding is in accordance with section 9." Therefore, amounts in excess of the amount necessary to meet the standards for solvency should include:

- Going-concern or solvency past service payments in excess of the minimum required contributions,
- Current service contributions remitted to the fund when a contribution holiday would have been permitted pursuant to Section 9(5) of the PBSR,
- Payments made into the fund so to permit the full payment of transfer values when the solvency ratio is less than one at the last valuation, and
- Payments made by an employer to the fund so to reduce the face value of an LC in accordance with Section 9.11(3) of the PBSR.

Contributions made to reduce the face value of LC should be more clearly accommodated through the regulations. There appears to be a path by first contributing an additional solvency special to an SRA and secondly reducing the LC. However, addressing this situation directly would assist plans in implementing the LC reduction with trustees who hold the LC. This could also simplify situations where an LC is present such as when there is an LC but no solvency special payments required (or permitted per the Income Tax Act), for example when the solvency ratio is between 100% and 105%, including the LC.

Section 9(6) of the PBSR permits the reduction of special payments for a subsequent year if an unfunded liability or solvency deficiency is liquidated at a rate greater than the minimum required providing the outstanding balance of an unfunded liability will at no time be greater than it would have otherwise been. If the excess contribution is both added to the SRA and utilized under Section 9(6), it will be double counted. Any reduction in contribution due to Section 9(6) should also offset the SRA.

9.23(1) – Withdrawals from an SRA

Any minimum thresholds should align with other provisions within the PBSR. Specifically, the threshold in 9.23(1)(a) for the going concern test should be changed from 1.05 to 1.0 to align with Section 9(6) of the PBSR. The going-concern basis already requires margins in the valuation basis, meaning that using a 1.0 ratio will still imply margins.

Also, the annual limit of 20% is overly restrictive. Increasing it to 33.3% to align with the 3-year smoothing on solvency would be an improvement, though requiring withdrawals to be spread over any period serves no real purpose and is unnecessarily complicated.

While not addressed in the draft regulations, we would expect a withdrawal from the SRA (and the fund) to be treated as a negative cash flow in determining the average solvency ratio.

9.23(2) – No withdrawals if solvency ratio materially lower

This provision is inappropriate and unnecessary for several reasons:

- "Materially lower" relies on judgement;
- The solvency ratio may also be materially lower, but still in excess of 105% if the plan had a surplus at the previous valuation, thus not infringing on benefit security;
- Subject to our comments above, Section 9.23(1) and elsewhere in the funding regime already provides for sufficient margins and safeguards; and
- Attaching the test to the date of withdrawal, rather than the date of valuation, creates uncertainty as financial conditions vary day-to-day.

If a threshold is maintained, an alternative would be to set it at a solvency ratio of one, resolving the issues of judgement and permitting the margins to be the primary mechanism for ensuring benefit security while providing a back stop.

9.24 – Impact of contribution holidays on SRA

Section 9.24 requires a transfer out of the SRA to the main fund equal to any contribution holiday taken under Section 9(5). This provision should be removed as it is inconsistent with the objectives of the SRA. The purpose of the SRA is to create a refundable reserve for solvency payments and other contributions in excess of those necessary to meet the tests and standards for solvency. Contribution holidays are only permitted when there is both a going-concern surplus and a solvency ratio over 105%. Therefore, from an actuarial perspective, amounts in respect of contribution holidays are not necessary for the viability of plan.

Moreover, including this provision would encourage employers who establish an SRA to withdraw amounts from the SRA at the earliest possible opportunity, thus defeating the purpose.

The equivalent requirement does not exist in the LC regulations, meaning LCs and SRAs would not be subject to parallel treatment.

Looking to other jurisdictions, neither Alberta or British Columbia have such provisions in their SRAs. While in Quebec's notional refundable account does reflect contribution holidays, there is a fundamental difference as the funding regime is predicated on a going-concern basis, not solvency.

9.25 – Plan termination

Section 9.25 permits an employer to withdraw the balance of funds in an SRA upon termination of the plan. To ensure employers are entitled to not only withdraw funds but keep such funds regardless of any language in a plan text that might entitle employees to surplus or that are ambiguous or uncertain due to missing documentation, and without a requirement to share such surplus (per s. 9.2), the wording should be strengthened to clarify that regardless of the terms of the pension documentation, the employer has *entitlement* to the funds in the SRA. Similarly, Section 9.23(1) should be clarified, or an additional section could be added to the regulations that make the employer's entitlement to "excess" assets held in the SRA, be the SRA notional or otherwise, clear. Clarity on this point would be consistent with the purpose of the SRA. Indeed, if this aspect of the SRA regime is unclear, litigation regarding ownership of and entitlement to, SRA funds that are not held in a separate trust may ensue.

Effective Date

We encourage that contributions made since the 2022 Budget announcement be eligible as payments into an SRA. Allowing retroactive eligibility would support administrative feasibility and align with industry precedent, supporting a smoother transition for employers who anticipated these regulations in their prior contributions.

Multi-employer pension plans solvency funding requirements

We commend the alignment of the regulations with current MEPP practices and encourage a similar provision be extended to single-employer pension plans, following Ontario's example.

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We appreciate your openness to our views on these important matters and would welcome an opportunity to discuss our feedback in further detail.

Yours very truly,

Korinne Collins
Chief Executive Officer, ACPM