Morneau Shepell provides COVID-19 resources and information

Amid ongoing concern about the COVID-19 pandemic, Morneau Shepell continues to provide resources to our clients and to the general public to help deal with the impact of the virus. This includes information on our Business Continuity Plan, Tips for Protection, Tips for Coping, and periodic updates. As a fast-moving and fluid situation, we encourage you to visit these web pages for the latest information and resources.
**Preparing for business disruptions**

Employers should be preparing for potential business disruptions and loss of key individuals to quarantine and illness. Employers everywhere are being asked to move to remote or alternate work arrangements and prepare for contingencies due to the outbreak. Morneau Shepell prepared for contingencies and we are fully operational.

Many of Morneau Shepell’s services can be provided remotely if necessary or upon request, including all our core services such as counselling and other Employee and Family Assistance Program (EFAP) services, cognitive behavioural therapy, e-learning and webinars, absence and disability management, administrative services and retirement consulting.

**How employers can support employees**

One of the ways that employers can prepare for COVID-19 is to engage support programs for staff who are anxious and require information from reliable sources. These resources can also help educate employees and managers, as well as help them deal with stress and traumatic situations. Several services offered by our well-being business, LifeWorks by Morneau Shepell, may be of assistance and are described below.

**Employee and Family Assistance Program**

Morneau Shepell offers a number of services through our EFAP that can be relevant to the current situation. Through the LifeWorks by Morneau Shepell EFAP, the company offers employees access to professional support to help manage stress, anxiety, grief, and financial concerns. The program also provides online resources for coping with trauma, building resiliency, self-care, and managing change. For people leaders, the EFAP offers consultations to support them in dealing with sensitive workplace situations.

The EFAP is available 24 hours a day, seven days a week. Participating employees can connect by phone, video or online chat from wherever they are located.

**First Access**

For organizations that do not have an EFAP, LifeWorks by Morneau Shepell offers First Access, a service offering professional counselling and traumatic event support to organizations in any industry worldwide. First Access enables organizations to access confidential support services in a timely fashion, whether or not they have an EFAP in place. Organizations looking for more information on this service can learn more online or contact the First Access team at firstaccessservices@lifeworks.com.

**Workplace Learning Solutions**

Workplace Learning Solutions, an educational service provided through our well-being business, currently offers four free webinars related to COVID-19 and working remotely. It also offers webinars to clients and their employees to provide strategies to improve resilience and provide other forms of virtual training. Please visit the Workplace Learning COVID-19 Awareness and Training web page for the latest offerings.

**Keeping a sense of community among employees**

As many employers restrict travel and move towards virtual workforce arrangements, concerns may arise about the feelings of isolation this could engender. LifeWorks by Morneau Shepell offers a number of services aimed at enhancing the feeling of community throughout an enterprise, which could be of assistance to employees during this challenging time. The Recognition and Newsfeed platform provides a number of different channels for communicating with employees, including a Well-Being News Feed and a directory of employee profiles, while its peer-to-peer recognition feature enables employees to recognize their peers through posted messages that are visible to everyone in the company.

**Keeping updated**

We encourage you to visit the Morneau Shepell COVID-19 web pages for the latest information, resources, and learning opportunities.
Nova Scotia Pension Benefits Regulations amended

On February 24, 2020, Nova Scotia amended its Pension Benefits Regulations (the Regulation) and announced that the changes in Bill 109 will become effective April 1, 2020 (Bill 109 was discussed in the April 2019 News & Views). The amendments will amend the defined benefit (DB) funding framework largely in line with Ontario’s revised DB funding framework, and in line with previous announcements from the Nova Scotia government (see the June 2019 News & Views).

Solvency funding requirements

Under the new rules, DB pension plans will be required to be funded to at least 85% of their solvency liabilities, rather than the current requirement of 100%. The new solvency funding rules will apply to new and existing pension plans with valuation dates on or after December 31, 2019. Plans with a solvency ratio of less than 85% will have to fund the shortfall over a period of five years. The first valuation filed on or after December 31, 2019 requires past deficiencies to be consolidated, including any deficiencies currently being funded over a 15-year period, and any required contributions will take effect immediately at the valuation date (i.e. there is no option to defer the new funding schedule). For subsequent valuations, no consolidation of past deficiencies is permitted, though any new deficiency contributions may be deferred up to 12 months. Previous proposals requiring member consent or employer opt-in for 85% funding to apply have been dropped.

Pension plans that are currently exempt from solvency funding requirements will remain exempt under the new rules.

Going concern funding requirements

Going concern deficiencies will have to be funded over 10 years, rather than the current 15 year period. Going concern deficiencies will be consolidated at each valuation and any increase in contributions may be deferred up to 12 months from the valuation date. The amendments also introduce a requirement to fund a provision for adverse deviations (PfAD) on going concern liabilities. The PfAD includes a fixed 5% component plus a variable component based on the plan’s combined target asset allocation for non-fixed income assets which ranges from 0% to 17%, with higher PfADs for higher allocations to non-fixed income assets. Plans that are exempt from solvency funding requirements are also exempt from the fixed 5% component of the PfAD.

Transition period

A transition schedule is in place to address plans whose contributions increase under the new funding rules due to the introduction of a PfAD. Contributions in the year following the first valuation filed on or after December 31, 2019 will be capped at 100% of the contribution level that would have been required under the current rules. In subsequent years the cap on contributions will reduce gradually to 80%, 60%, 40%, 20% and then 0% in the sixth year after the first valuation filed under the new rules.

<table>
<thead>
<tr>
<th>% Assets in Non-Fixed Income Securities</th>
<th>Variable PfAD Component (PfAD for solvency-exempt plans)</th>
<th>Fixed PfAD Component (PfAD for plans non-solvency exempt plans)</th>
<th>PfAD for plans non-solvency exempt plans</th>
</tr>
</thead>
<tbody>
<tr>
<td>0%</td>
<td>0%</td>
<td>5%</td>
<td>5%</td>
</tr>
<tr>
<td>20%</td>
<td>1%</td>
<td>5%</td>
<td>6%</td>
</tr>
<tr>
<td>40%</td>
<td>3%</td>
<td>5%</td>
<td>8%</td>
</tr>
<tr>
<td>50%</td>
<td>4%</td>
<td>5%</td>
<td>9%</td>
</tr>
<tr>
<td>60%</td>
<td>5%</td>
<td>5%</td>
<td>10%</td>
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<tr>
<td>70%</td>
<td>8%</td>
<td>5%</td>
<td>13%</td>
</tr>
<tr>
<td>80%</td>
<td>11%</td>
<td>5%</td>
<td>16%</td>
</tr>
<tr>
<td>100%</td>
<td>17%</td>
<td>5%</td>
<td>22%</td>
</tr>
</tbody>
</table>
Contribution holidays
The amended Regulation will permit a pension plan to take a contribution holiday if the plan’s assets will be greater or equal to 105% of the solvency liabilities and 105% of the going concern liabilities after the holiday. The Nova Scotia government had previously proposed thresholds of 110% of solvency and going concern liabilities.

Reserve accounts
The amended Regulation permits solvency deficiency payments and certain other prescribed contributions, such as contributions relating to the PfAD, to be paid into a separate “reserve account.”

Upon the wind up of a pension plan, an administrator can withdraw a surplus held in a reserve account after all benefits have been paid, subject to Superintendent of Pensions consent.

Frequency of valuation reports for solvency-exempt plans
Pension plans that are exempt from solvency funding requirements and that have a solvency ratio of less than 85% will be required to file a full actuarial valuation report every three years and a cost certificate annually, or earlier if the Superintendent of Pensions deems this to be warranted.

Plans that are not exempt from solvency funding will still need to file a full valuation report annually if their solvency ratio is less than 85%.

Benefit improvements
If benefits are increased and a solvency funded ratio below 85% is created or increased, the new deficiency (up to 85%) must be funded in accordance with the usual solvency amortization periods. However, for solvency-exempt plans, the new deficiency (up to 85%) must be fully funded at the time of amendment.

Investment rules
The amended Regulation will incorporate the federal investment rules by referencing Schedule III to the federal Pension Benefits Standards Regulations, 1985. Assets of Nova Scotia regulated pension plans will have to be invested in accordance with federal investment regulations, rather than the previous Nova Scotia rules.

In line with the federal investment rules, member-directed defined contribution pension plans will not be required to have a statement of investment policies and procedures (SIPP). Furthermore, the 10% limit on investing pension plan assets in a single entity will be based on the “market value” of a pension plan’s assets rather than the “book value.” Finally, the previous exemption that permitted securities of a related party to be purchased on a public exchange will no longer apply.

Exemption for individual pension plans
Effective April 1, 2020, the individual pension plans (IPPs) whose members are “connected persons” as defined in the Income Tax Act will be exempt from most of the requirements of the Pension Benefits Act and Regulation. In order to be exempted, an IPP administrator must file a certificate with the Superintendent of Pensions attesting that all of its members are “connected persons” and expressing its understanding that the plan will be exempt from most provisions of the Pension Benefits Act and Regulation.

Certain provisions of the Pension Benefits Act and Regulation remain applicable after an IPP has become exempt. The requirement that the administrator exercise care, diligence and skill, obligations related to plan records, provisions respecting retirement dates and termination of membership, restrictions on commuted value transfers, investment rules and locking-in restrictions will all remain in place for an exempt IPP.

The administrator of an exempt IPP is required to inform the Superintendent of Pensions of any change that results in the plan no longer meeting the exemption criteria.

Annuity discharges
Effective April 1, 2020, the amendment adds a number of sections to the Regulation setting out...
requirements for annuity purchases in order to receive discharge of the obligation to pay a pension to former members, retired members and other persons in receipt of a pension upon the purchase of an annuity.

The new provisions also set out record-keeping requirements related to annuity purchases, as well as prescribed requirements for the certificate that must be filed in order for an administrator to obtain a discharge of the obligation to pay a pension upon the purchase of an annuity.

FSRA supervisory approach for actively monitored single employer defined benefit pension plans

On January 13, 2020, the Financial Services Regulatory Authority of Ontario (FSRA) released a guidance document (Guidance) which outlines its proposed supervisory approach for actively monitored (i.e., higher risk) single employer defined benefit pension plans (DBPPs), in recognition of the existing and emerging challenges involved in regulating such plans.

FSRA’s supervisory approach is premised on two components, namely protecting:

- pension benefit security for beneficiaries of single employer DBPPs
- reducing/eliminating threats to the long-term sustainability of the Pension Benefits Guarantee Fund (PBGF)

Identifying at-risk pension plans

FSRA states that it will be risk-based, in order to guide the implementation of its proposed approach. This means that risks will be assessed by their nature, size, complexity and potential impact on all pension plan stakeholders. Thereafter, regulatory resources will be focused on those pension plans determined to have the greatest risk to benefit security or which pose a threat to the sustainability of the PBGF.

In order to identify at-risk single employer DBPPs, FSRA will undertake a risk assessment of all single employer DBPPs each quarter. The assessment may include consideration of:

- investment risk and funding risk
- plan governance and satisfaction of fiduciary duties
- challenges faced by the plan sponsor, including recognition of the health of the plan sponsor
- challenges faced by the industry/industry risks (e.g., financial losses, corporate transactions)

Comment

These amendments to the Regulation will generally be welcome to private sector employers in Nova Scotia with the easing of solvency funding requirements. They are generally in line with Ontario funding reform, and mean that Nova Scotia joins British Columbia, Ontario and Quebec in passing comprehensive defined benefit funding reform.

With the introduction of the PfAD, plans that currently include any margins for conservatism in their going concern funding assumptions may wish to review that practice with their actuary. Further, plans may wish to review their asset allocations in light of the new rules, but it will be important to balance short and long-term considerations.

Reserve accounts will provide employers who are considering plan wind-ups an opportunity to potentially access surplus that may have previously been subject to the specific surplus availability and sharing rules of their plan provisions.

The annuity discharge provisions will allow employers to be discharged from legal liability for plan liabilities by purchasing annuities, and can be a valuable de-risking tool. Nova Scotia joins British Columbia, Ontario and Quebec in providing for statutory discharges for annuity purchases in their legislation.
Notably, FSRA indicates that it will use its “judgement” in its assessment of risk. Also, the status of being an actively monitored plan would be confidential but would be disclosed to the plan administrator.

**Promoting the fiduciary duty of the administrator**

FSRA will require plan administrators of actively monitored plans to demonstrate that it understands the scope of its fiduciary obligations (e.g., through fiduciary training or engaging appropriate advisors). FSRA will also consider the plan administrator’s decisions with respect to its standard of care (e.g., the plan’s ability to absorb future fluctuations in funding costs).

FSRA will also review the governance framework of such plans to ensure that the administrator’s fiduciary obligations are being satisfied.

**Assessing risk management**

Once the pension plans at greatest risk have been identified, FSRA’s approach would be to consider whether the plan sponsors have taken appropriate measures to address such risks. Following this assessment, FSRA notes that it will deploy regulatory tools and powers in a “reasonable and proportionate way,” and will encourage appropriate risk management measures for mitigation purposes.

**Potential outcomes once identified as an at-risk plan**

Following FSRA’s engagement with the administrator and plan sponsor, FSRA has established certain outcomes that may arise, however, they are not limited to the following:

- Removal of “actively monitored plan” status
- Requiring additional reporting or continued monitoring
- Requiring the development of a risk management plan that remediates or mitigates the risks identified
- Development of strategic solutions to improve outcomes for pension plan beneficiaries

**Comment**

The Guidance describes FSRA’s internal principles, processes and practices for supervisory action and application of CEO discretion for higher risk Ontario defined benefit (DB) pension plans. Although it does not create new compliance obligations, the Guidance sets out FSRA’s expectations for DB pension plans it considers to be higher risk. Such plans will be expected to demonstrate strong governance practices, including the possible adoption of a funding policy, as well as explaining their approach to risk management.

**B.C. owner and director found personally liable for unpaid pension contributions**

A recent British Columbia case1 resulted in a finding that the owner and director of an employer was personally liable for breach of trust for failing to remit contributions to a multi-employer pension plan. The decision demonstrates the risks to employers in failing to remit pension contributions in a timely fashion in accordance with pension legislation.

**Background**

The trustees of the IWA – Forestry Industry Pension Plan (the Plan) sued Roger Wade, the sole director, officer and shareholder of R W Log Transport (Log Transport), a log hauling company. The plaintiffs alleged Mr. Wade was personally liable for the company’s breach of trust in failing to remit contributions, failing to protect contributions held in trust and using those contributions for unauthorized purposes.

Mr. Wade operated and controlled Log Transport from 2007 to 2014. He was the only person

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1 Trustees of the IWA v. Wade, 2019 BCSC 1085.
responsible for verifying and approving expenditures on behalf of Log Transport, and he alone held signing authority and access to the company’s bank account.

As a participating employer in the Plan, Log Transport was required to hold employer and employee contributions in trust and remit them to the Plan for the benefit of the unionized employees.

In 2013 and 2014, Log Transport experienced financial difficulties, which resulted in outstanding contribution reports and contributions. Despite having reached an agreement with the trustees in 2013 regarding outstanding amounts owed to the Plan, Log Transport’s financial circumstances worsened and the contributions remained outstanding. Ultimately, Log Transport ceased operations in 2014, leaving behind a significant amount of debt, including outstanding employer pension contributions and pension contributions that had been made by the employees but not remitted to the Plan.

Under British Columbia legislation as it existed at the time, participating employers were obligated to keep required employer and employee contributions separate and apart from the employer’s own assets and to remit them no later than 30 days after the end of the month to which the contributions related. The legislation created a deemed trust over employer contributions and the employee contributions that had been deducted from pay and not yet remitted to the Plan, in addition to the trust obligations under the terms of the Plan and participation agreements.

Breaches of trust by Log Transport

The court found Log Transport had committed a number of breaches of trust. Log Transport held employer and employee contributions in its general operating bank account, rather than a separate trust account. It used these contributions to pay its general operating expenses and failed to make the required contributions to the Plan. The court found that these breaches were fraudulent and dishonest.

Although the breaches were committed by Log Transport in its capacity as the employer, Mr. Wade was found to have knowingly participated in the breaches. The court found that he had signed the participation agreements, and therefore was fully aware of Log Transport’s obligations with respect to the Plan. He was also fully aware of the company’s business and financial operations.

As such, Mr. Wade was held personally liable for the unpaid contributions and interest, as well as the trustees’ legal costs.

Comments

This case highlights the strict obligations on employers in respect of employer and employee contributions to a pension plan, particularly where pension contributions are co-mingled with the employer’s general bank account. The case also serves as a reminder that a third party, such as a director or officer of the employer, may be held personally liable for breach of trust in respect of pension contributions. These risks are particularly high in businesses with concentrated ownership and control.
Tracking the funded status of pension plans as at February 29, 2020

This graph shows the changes in the financial position of a typical defined benefit plan with an average duration since December 31, 2019. For this illustration, assets and liabilities of the plan were each arbitrarily set at $100 million as at December 31, 2019. The estimate of the solvency liabilities reflects the new preliminary CIA guidance for valuations effective December 31, 2019 or later. The following graph shows the impact of three typical portfolios on plan assets and the effect of interest rate changes on solvency liabilities of medium duration.

The evolution of the financial situation of pension plans since December 31, 2019

During the month of February, Canadian universe bonds, Canadian long-term bonds and Canadian long-term provincial bonds showed positive returns. However, Canadian equity markets, global equity markets (CAD) as well as alternative investments showed negative returns. With a return of -2.3%, the low volatility portfolio (LDI) outperformed the highly diversified portfolio (HD) (-3.4%) and the 60/40 portfolio (-3.5%).

1 Liability driven investment
The prescribed CIA Annuity purchase rates as well as the commuted value rates used in the calculation of solvency liabilities decreased during the month. As a result, the solvency liabilities increased for a medium duration plan. For this type of plan, an investment in the LDI, in the HD and in the 60/40 portfolio resulted in a decrease of the solvency ratio.

The table shows the impact of past returns on plan assets and the effect of interest rate changes on solvency liabilities of a medium duration plan, based on the plan’s initial solvency ratio as at December 31, 2019. The graph shows the asset allocation of the three typical portfolios.

<table>
<thead>
<tr>
<th>Initial solvency ratio as at December 31, 2019</th>
<th>Evolution of the solvency ratio as at February 29, 2020 for three different portfolios</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>60/40 portfolio</td>
</tr>
<tr>
<td>100%</td>
<td>94.4%</td>
</tr>
<tr>
<td>90%</td>
<td>85.0%</td>
</tr>
<tr>
<td>80%</td>
<td>75.5%</td>
</tr>
<tr>
<td>70%</td>
<td>66.1%</td>
</tr>
<tr>
<td>60%</td>
<td>56.6%</td>
</tr>
</tbody>
</table>

Since the beginning of the year, driven by negative returns in the Canadian equity markets, global equity markets as well as alternative investments, the LDI portfolio, the HD portfolio and the 60/40 portfolio returned 1.2%, -1.0% and -1.3% respectively. The solvency liabilities fluctuated over that same period from 4.0% to 5.2% depending on the duration of the group of retirees. The variation in the plan’s solvency ratio as at February 29, 2020 stands between -5.6% and -2.0%.

Please contact your Morneau Shepell consultant for a customized analysis of your pension plan.

Comments

1. No consideration has been made for contributions paid to the plan or for benefits paid out of the plan.

2. Solvency liabilities are projected using the rates prescribed by the CIA for the purpose of determining pension commuted values.

3. The underlying typical defined benefit plan is a final average plan with no pension indexing, including active and inactive participants representing 60% and 40% of liabilities, respectively.

4. Assets are shown at full market value. Returns on assets are based on three typical benchmark portfolios.
Impact on pension expense under international accounting as at February 29, 2020

Every year, companies must establish an expense for their defined benefit pension plans. The graph shows the expense impact for a typical pension plan that starts the year at an arbitrary value of 100 (expense index). The expense is influenced by changes in the discount rate based on high-quality corporate and provincial (adjusted) bonds and the median return of pension fund assets.

Expense Index from December 31, 2019

The table below shows the discount rates for varying durations and the change since the beginning of the year. A plan’s duration generally varies between 10 (mature plan) and 20 (young plan).

Discount rate

<table>
<thead>
<tr>
<th>Duration</th>
<th>December 2019</th>
<th>February 2020</th>
<th>Change in 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>3.06%</td>
<td>2.57%</td>
<td>-49 pdb</td>
</tr>
<tr>
<td>14</td>
<td>3.13%</td>
<td>2.67%</td>
<td>-46 pdb</td>
</tr>
<tr>
<td>17</td>
<td>3.17%</td>
<td>2.73%</td>
<td>-44 pdb</td>
</tr>
<tr>
<td>20</td>
<td>3.20%</td>
<td>2.77%</td>
<td>-43 pdb</td>
</tr>
</tbody>
</table>

Since the beginning of the year, the pension expense has increased by 17% (for a contributory plan) mainly due to the decrease in the discount rates.

Please contact your Morneau Shepell consultant for a customized analysis of your pension plan.
Morneau Shepell is the leading provider of technology-enabled HR services that deliver an integrated approach to employee well-being through our cloud-based platform. Our focus is providing world-class solutions to our clients to support the mental, physical, social and financial well-being of their people. By improving lives, we improve business. Our approach spans services in employee and family assistance, health and wellness, recognition, pension and benefits administration, retirement consulting, actuarial and investment services. Morneau Shepell employs approximately 6,000 employees who work with some 24,000 client organizations that use our services in 162 countries. Morneau Shepell is a publicly traded company on the Toronto Stock Exchange (TSX: MSI). For more information, visit morneaushepell.com.