

**MEBCO SUBMISSION TO THE
SASKATCHEWAN FINANCIAL SERVICES COMMISSION (SFSC)
SHORT-TERM MEPP RELIEF REQUEST**

MEBCO

MEBCO was established in 1992 to represent the interests of all types of Canadian multi-employer benefits plans, including multi-employer pension plans (“MEPPs”) and multi-employer benefit plans (“MEBPs”). MEBCO is representative of all persons and disciplines involved in these plans, including union and employer trustees, professional third party administrators, non-profit or “in-house” plan administrators, and chartered accountants. MEBCO is administered by a Board of Directors consisting of representatives from each of these groups. MEBCO is representative of MEPPs that have, on average, 400 participating employers.

MEBCO members have responsibility for administering benefit plans with accumulative membership of workers and families of over one million persons in Canada.

Multi-Employer Pension Plans (“MEPPs”)

Over the past quarter-century, labour and management joined together to respond to the problems of delivering retirement benefits to workers and their families in industries typified by small companies and a mobile work force. Members of MEPPs work in industries as diverse as building and construction, food, service, retail, hotel and restaurant, graphic arts, garment manufacturing, security, textiles, transportation, and entertainment. A single MEPP may be national, regional, provincial, or local in coverage. Anywhere from two to over 1,000 employers may contribute to one of these plans under collective agreements.

MEPPs provide continuous benefits coverage to workers as they change employment from one contributing employer to another. This portability provides seamless pension coverage, and is essential for workers in mobile or seasonal industries such as construction and entertainment.

A MEPP is typically structured as a pension trust fund for purposes of s. 149(1)(0) of the *Income Tax Act* (the “ITA”). The trustees, appointed pursuant to a trust agreement, are usually responsible for the administration of the plan and the fund. A fund will either handle its own administration or hire of a third party administrator.

Multi-employer defined benefit pension plans based on labour-management negotiations in the private sector are a cornerstone to the provision of retirement income in Canada.¹

¹ In rough terms, there are nearly 200 MEPPs in Canada covering over a million participants.

Unlike single employer plans (SEPPs), these plans are not being wound up, converted to (or replaced by) defined contribution plans, or subject to wind-up because of the insolvency of a single employer. They are not the subject of disputes about contribution holidays or surplus ownership. Further, the “defined benefit” is in reality a target benefit, because contribution rates typically are fixed in collective agreements.

In order to provide effective relief to “traditional” Multi-Employer Pension Plans (MEPPs) – so-called specified contribution target benefit plans – there are certain key elements that one must understand, particularly because there are key differences compared to Single Employer Pension Plans (SEPPs). These include:

- MEPPs are administered by a Board of Trustees comprised of at least 50% member representatives. All aspects of plan administration, investment of funds, etc. are the responsibility of the Trustees, not the participating employers.
- “Traditional” MEPPs have fixed contribution rates that cannot be changed by the Trustees who administer these plans. Minimum funding requirements under a Pension Benefits Act (PBA) do not cause the MEPPs’ contribution income to increase. The only way to remedy an apparent minimum funding violation is to reduce benefits. In all jurisdictions except Québec², the Trustees have the authority to make such benefit reductions, typically subject to approval by the regulator. Thus, these plans are more accurately described as having “target” benefits, with the members effectively bearing the risk.
- There are many aspects to benefit security in MEPPs, including the nature and sustainability of the industry (particularly the unionized segment); the number, independence, and diversity of employers; the participant support; and the level of plan assets and future contributions relative to obligations. This submission will focus on the last of these aspects, but the others are always important as well.
- Benefit security in Canada is traditionally viewed primarily in terms of the risk that participants will or will not receive the full promised pensions, based only on service to date, if the plan winds up. MEBCO believes that the concept of benefit security should encompass a participant’s ability to both continue to earn pension benefits and plan for retirement on the basis of the current benefit formula. MEPPs are far less likely to wind up than SEPPs, although the risk does exist in certain circumstances.
- All assets in a MEPP belong solely to the participants – there are no issues of surplus ownership or funding of deficits. Benefit security can be improved by added funding (as happens with SEPPs), *but it cannot be improved by benefit cuts.*

² The laws applicable to MEPPs in Québec are different in fundamental ways from those in the rest of Canada. This submission will generally not be applicable in Québec, nor will it address any issues that are unique to Québec.

Solvency Relief Discussion Paper

One of the objectives outlined by the SFSC in its Discussion Paper was to provide meaningful relief for all defined benefit plans. MEBCO recognizes there are requests from many pension plans for immediate and meaningful relief. However, since MEPPs are very different from SEPPs, the long term implications of any short term relief also very different for these two types of pension plans. Unless substantial and permanent changes are made with respect to MEPP funding requirements, any short term relief measures adopted today will more than likely cease to be meaningful at the end of the relief period. In other words, SEPPs can appropriately be described as having a need for short term relief whereas MEPPs require long term changes if these plans are to continue to fulfill their valuable role.

Alberta, British Columbia, and Ontario have all completed extensive reviews of the funding requirements under their legislation. Acknowledging that some differences in recommendations exist between these jurisdictions, they are uniform in having come to the conclusion that solvency funding for MEPPs is inappropriate. MEBCO urges the SFSC to review and consider the work completed to date in reassessing what type of changes are required to the funding regimes for MEPPs. The remainder of this submission outlines the basis for change as well as the types of changes and relief measures that MEBCO believes are appropriate and required for MEPPs.

Funding Environment

Trustees, unions, employers, participants, and the government have a legitimate interest in making sure that MEPP Trustees do not make “excessive” benefit commitments that are unlikely to be fulfilled without negotiating contribution increases in future collective agreements or achieving exceptionally high investment returns. The traditional standard in Canada has been that benefits should be sustainable within a target of 15-year amortization of any unfunded liabilities based on currently negotiated contribution rates. MEBCO believes that shortened periods are inappropriate, whether they arise through solvency funding or via restrictions on going concern assumptions and methods, as they force lower benefits without improving benefit security or sustainability.

2008 Market Returns

The decline in the stock market over the last several months, coupled with low investment returns in 2007, creates the likelihood that some MEPPs that are required to file actuarial reports as of current dates (primarily January 1, 2009) will find that they are not able to meet the target amortization requirements, even without solvency funding. There is, of course, the possibility that any market recovery will be slow to start and slow to make up the losses. In addition, many of the industries that include MEPPs may find that employment (and therefore contribution income) is adversely affected by a recessionary period of any length. MEBCO is concerned that some MEPPs will be

compelled as a result to impose benefit reductions in the near future. They are particularly concerned that such reductions may be required before there is an opportunity for (a) a recovery, or (b) an increase in negotiated contribution rates at the bargaining table, either of which could eliminate or reduce the need for benefit reductions. Therefore, MEBCO believes that measures currently contemplated by the SFSC are not in themselves fully sufficient to address the current crisis. Hence, MEBCO proposes the following package of regulatory changes to minimize unnecessary disruptions to the lives of those who are retired or near retirement:

- For the purpose of reporting a pension plan's hypothetical wind-up position, allow the early adoption of the new Canadian Institute of Actuaries (CIA) guidelines in the determination of solvency commuted values for valuation dates on and after September 30, 2008.
- Introduce a solvency funding moratorium for all new and previously established solvency deficiencies until such time as permanent changes are enacted. Over the interim period until permanent changes are enacted, modified going concern rules, as expounded upon below, should apply.
- Allow 20-year amortization for special payments related to actuarial investment losses³ in plan years beginning in 2008. Note that such special payments may not all arise at the start of the following plan year, because asset smoothing may result in those losses being reflected over a period of up to five years into the future.
- Allow MEPPs to implement any corrective action over two future potential funding cycles (each cycle is typically three years), or the start of the 2012 plan year if later. This approach would allow MEPPs time to prudently, practically implement any package of contribution rate increases and/or benefit reductions into their plans. The MEPP must develop and submit the corrective action to the SFSC, but the effect can be delayed until no later than the beginning of the next (i.e., not the current) funding cycle (or 2012 if later).
- Allow amendments that improve benefits, provided that the projected total contributions will be sufficient to cover going concern funding requirements as described above plus a new special payment over 15 years of the added actuarial liability due to the amendment. Funding relief is of limited value if it inhibits restoration of cuts made in the past – for example, cuts made to comply with solvency funding. Further, it will be easier to get participant consent to contribution rate increases if there is some benefit improvement in return.

³ An actuarial investment loss is defined to be the loss on a going concern basis between the assumed rate of return for the MEPP and the actual rate of return achieved by the MEPP.

We are fully committed to discussing the details of this proposal with the government and to assisting in the drafting or review of new regulations (in confidence) to assure that they are effective in accomplishing the intended objectives.

Industry Actions

The financial and economic realities of this millennium have not been lost on the fiduciaries for MEPPs. Many MEPPs have implemented various actions to improve the management of MEPPs, including:

- Improved governance practices: many MEPPs have conducted governance reviews over the recent past to improve processes and decision making and increase the efficiency of the management of the MEPP;
- MEPPs have dedicated significant resources to communicate with, and the education of, plan members so that these stakeholders are more familiar with the nature of their pension plan's promises. Examples of communication efforts undertaken by MEPPs are seminars, websites, newsletters and other reports. We are confident that the efforts already undertaken in this regard will continue to be enhanced as pension plan members' concerns about the financial environment has been heightened;
- Trustee education: as part of the governance review, MEPPs have confirmed and documented the need for continued education obtained through ad hoc educational sessions provided by administrators, actuaries, lawyers and other professionals, online information sources and attendance at conferences specifically targeted to MEPPs (e.g., conferences sponsored by the International Foundation of Employee Benefit Plans, Canadian Labour Congress and Shareholder Association for Research and Education);
- MEPPs ensure good governance by following the 11 principles established by CAPSA and set out in the Guidelines for Pension Plan governance. MEPP good governance practices include a review of the skills necessary for the delivery of pension benefits, the education of trustees, the assignment of roles to professionals and the monitoring of the professionals retained by the MEPP. MEPPs regularly review the skills required for good management of the pension plan and have dedicated resources for the education of trustees and other delegates in the pension process.

MEBCO believes that the foregoing initiatives already undertaken by the industry, in conjunction with the introduction of funding requirements specific and appropriate to the risk characteristics of MEPPs, are the best course of action to pursue to preserve, protect, and expand the retirement benefits provided by MEPPs.