

MEBCO SUBMISSION TO MINISTRY OF FINANCE

“Strengthening the Legislative and Regulatory Framework for Private Pension Plans Subject to the *Pension Benefits Standards Act, 1985*”

INTRODUCTION

MEBCO would like to take the opportunity to make a submission to the Ministry of Finance with respect to the recently released discussion paper from the Ministry on pension plans subject to the PBSA. We understand that this submission was not available by the closing date for submissions. However, at the recent consultation in Toronto, the attendees were encouraged to continue to provide written comments.

We trust the Ministry will find MEBCO’s submission of assistance with your review of pension legislation.

MEBCO would be pleased to meet with the Minister and/or Ministry staff to discuss any issues raised in this submission.

MEBCO

MEBCO was established in 1992 to represent the interests of all types of Canadian multi-employer benefit plans, including multi-employer pension plans (“MEPPs”) and multi-employer health and welfare 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, attorneys, actuaries, consultants, investment management professionals 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 decades, 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 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 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.² 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 the PBSA do not cause MEPPs’ contribution income to increase. The only way to remedy an apparent minimum funding violation is to reduce benefits. In all jurisdictions except Québec³, 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.

¹ According to the report commissioned by the Ontario Expect Commission on Pensions entitled *Current Issues Concerning Multi-Employer Pension Plans in Ontario* by Elizabeth Shilton, there are over 400 MEPPs in Canada covering over 1.5 million participants.

² There are a number of MEPPs, including some very large ones, where the Trustees are entirely drawn from member representatives, and there is no employer representation.

³ The laws applicable to MEPPs in Québec are different in fundamental ways from those in the rest of Canada.

- 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 both to continue to earn pension benefits and to 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.*

MEPPs are fundamentally different from SEPPs and therefore require a different legislative and regulatory framework. Our understanding is that there are only a small number of MEPPs that are subject to Federal jurisdiction. However, there are also individuals whose employment is in the Federal jurisdiction who participate in MEPPs that are registered provincially.

ISSUES FOR DISCUSSION (DEFINED BENEFIT PLANS)

The Government of Canada is interested in stakeholders' views regarding the rules for funding solvency deficiencies and the solvency calculation itself.

MEBCO firmly believes that solvency funding requirements are inappropriate for MEPPs. We first note that wind-ups of MEPPs are extremely rare, because the insolvency of a single employer does not usually have a significant impact on the continuation of the plan. The infrequent plan terminations that have occurred have essentially reflected an entire industry moving its production out of Canada (e.g., textiles).

The concept of solvency funding is that it increases plan assets without increasing benefit obligations, thus improving benefit security for the participants. In the MEPP environment, the contribution income is fixed in multi-year collective agreements. Therefore, solvency funding requirements cannot compel increased contributions. Instead, they force lower benefits. As mentioned above, benefit security cannot be improved by benefit reductions. A plan with \$85 in assets will pay \$85 in benefits if it winds up, whether the benefit level is \$100 (without meeting solvency funding) or \$85 (with solvency funding). The one thing that solvency funding does do, unfortunately, is turn a highly unlikely event (benefit reductions in the event of plan wind-up) into a certainty. That cannot possibly be in the interest of the plan participants.

The Government of Canada is seeking views on whether to require that plan sponsors fully fund pension benefits when a plan is fully terminated, but provide that payments can be made over a period of five years, and treat the outstanding obligation as an unsecured debt of the company. In addition, the Government is seeking views on conditions, if any, where a plan could be terminated in an underfunded position by virtue of an agreement between the sponsor and plan members.

This issue relates to SEPPs, so MEBCO has no comment. Employer obligations in excess of the negotiated contributions are not appropriate for MEPPs, and Québec's requirements for such

funding have resulted in MEPPs refusing to accept participation by Québec employers and unions.

The Government of Canada is seeking views on whether to eliminate the concept of partial termination from the Act but require immediate vesting of pension benefits for all members.

Partial terminations are not appropriate for MEPPs, because employers come and go all the time with no significant adverse effect on the plan.

MEBCO does not support full immediate vesting for MEPPs. Primarily, MEBCO's concern is that, given fixed contribution income, immediate vesting represents a mandatory diversion of resources that would otherwise provide pensions. Indeed, in industries where there is significant early turnover, imposition of immediate vesting might require a reduction in the retirement benefits already offered. Providing short-service vesting typically provides benefits that are small and that are cashed out without locking in, thus diverting pension resources to current income. Administrative costs are, of course, increased as well, which also diverts funds that would otherwise be used for benefits. Finally, MEBCO notes that MEPPs already have superior portability to SEPPs, as there is continuity of pension credit for employment within the coverage of the plans.

The Government of Canada is seeking views on whether to:

- *require administrators to establish a Statement of Funding Policy (SFP) in a similar fashion as the Statement of Investment Policies & Procedures (SIP&P). The SFP would be examinable upon request, like the SIP&P.*
- *allow required disclosure items to be disseminated by electronic means, at the option of the receiving member or beneficiary.*
- *expand the categories of members required to receive plan information to include former members and retirees, where it is appropriate.*

MEBCO supports plans having an SFP, but notes that, for MEPPs, the policy is really with respect to the determination of benefit levels, since the contribution income is not within the control of the Trustees. MEBCO also supports full benefit and funding level disclosure for all participants, regardless of status.

The Government of Canada is seeking views on whether:

- *plan sponsors be required to develop a formal policy on contribution holidays for inclusion in a Statement of Funding Policy; and*
- *to the extent that employer contributions are permitted under the tax rules, plan sponsors only be permitted to take a contribution holiday in the year in which a valuation report, filed with OSFI, shows a surplus in the plan on a solvency basis.*

This issue relates to SEPPs, so MEBCO has no comment. Contribution holidays are not applicable to MEPPs.

The Government of Canada is seeking views on whether to amend the regulations to prescribe a solvency ratio level of 0.85 for the purpose of implementing the void amendment provision in the Act.

MEBCO does not support any void amendment provision for MEPPs, other than the right of rescission of recent amendments in the event of a wind-up with insufficient assets. First, MEPPs already have the right to reduce benefits (subject to prior approval of the regulator) if necessary to meet funding requirements. Second, when additional funding needs to be negotiated at the bargaining table, that additional funding is more likely to be achieved if it includes a modest benefit improvement than if it is solely for funding.

The Government of Canada is seeking views on whether there are legislative impediments to the creation or operation of multi-employer pension plans, and if there are improvements that could usefully be made to the legislative framework for these arrangements.

MEBCO appreciates the Government's recognition that the regulatory environment currently is designed for SEPPs, and that MEPPs are significantly different and should be treated as such so as to encourage their growth and prosperity. There are many details that MEBCO believes would facilitate the continued success of MEPPs. Rather than try to identify all of them in this submission, MEBCO suggests a dedicated session with its Government Liaison Committee to identify these issues and to work together to design and implement effective solutions. Indeed, it would be ideal if the Government could facilitate such a session including representatives of the provincial governments, with the goal of a uniform national model law respecting MEPPs, given that many of these plans are multi-jurisdictional in their coverage.

The Government of Canada is seeking views on ways to improve the regulatory framework governing pension investment.

MEBCO believes that a principles-based fiduciary standard for investment of pension plan assets is preferable to detailed rules-based requirements.

Although not specifically requested, MEBCO encourages the Government of Canada to increase the maximum contribution limit for MEPPs (and other retirement savings as appropriate). The current market declines have resulted in the substantial increase in funding shortfalls for all pension plans including MEPPs. If a MEPP's contribution rate is currently at the maximum permitted, benefit reductions may be required to address the funding shortfall since there is no ability to increase the MEPP's contribution income. We encourage the Government of Canada to increase the contribution limit to allow members of MEPPs to be able to augment their retirement savings to maintain an appropriate level of retirement income rather than the trustees of MEPPs being forced to reduce benefits.

MEBCO appreciates the opportunity to express its views with respect to the important issues raised in the discussion paper. Please feel free to contact and involve us as you continue your deliberations.