MINISTER OF FINANCE

RECOMMENDATIONS FOR REFORMS TO *THE PENSION BENEFITS ACT* (PBA)

THE PENSION COMMISSION OF MANITOBA

NEW PLAN DESIGNS

Recommendation

That a new target benefit/shared risk plan design for single employer, multi-employer, private sector and public sector plans is permitted. The new plan design should be flexible enough to apply to a broad range of pension plans. It should also require that the plan is jointly trusteed, is exempt from solvency funding, applies only to future benefit accruals, and pays going concern commuted values based on the funded status of the plan.

Rationale for Recommendation

The new target benefit/shared risk plan design would provide cost certainty with a defined benefit (DB) promise. This may encourage DB participation if plan sponsors can rely on a fixed cost of benefits.

Multi-unit pension plans (MUPPs) permit the reduction of accrued benefits. Under a non MUPP members are entitled to the promised benefit which must be funded by the plan sponsor. Under the new plan design accrued benefits may be reduced. To protect benefits accrued to the date of conversion, the new plan design should apply prospectively only.

Commentary

Manitoba currently permits MUPPs. These plans are similar to target benefit plan in that employee and employer contributions are fixed through collective agreements, they are jointly trusteed, and benefits can be reduced with the Superintendent's approval to the degree necessary to meet solvency funding requirements. All jurisdictions have similar legislation. There are five DB MUPPs in Manitoba.

The commission considered three new plan designs: Jointly Sponsored Pension Plans, Target Benefit Plans and Shared Risk Pension Plans.

Jointly Sponsored Pension Plan (JSPP)

JSPPs are contributory DB plans in which the employer and members share responsibility for the plans governance and funding. If there is a shortfall, both the employer and member are responsible for funding a portion of the shortfall. JSPPs are generally funded on a solvency basis and must be administered by a board of trustees or similar body with equal employee and employer representation. British Columbia, Alberta and Ontario have passed JSPP legislation.

Target Benefit Plan (TBP)

TBPs specify a target pension, with no guarantee that the pension provided at retirement will equal the target amount. The actual benefit is determined based on affordability, with the ability to adjust benefits as the plan's experience develops. Employee and employer contributions are at a fixed level, often collectively bargained. Since members share in the responsibility of ensuring the plan is sufficiently funded their contributions can increase more easily. As the employer's liability is limited to the fixed contribution, employers are not required to fund deficits. If a valuation identifies that the plan has a deficit, benefits may reduced whether in payment or not, future accruals may be reduced, and contributions increased.

While TBPs may be exempt from solvency funding, they may also be subject to more stringent going concern funding requirements, such as the requirement to include a provision for adverse deviation or accelerated going concern funding.

A wide range of TBP models are possible. Alberta permits TBPs for future service only, British Columbia for multi-employer plans only, the federal government for single and multi-employer plans using a framework similar in many respects to the New Brunswick SRPP, and Ontario for all private sector and Crown corporation plans but not core public sector plans governed by statutes (i.e. *Public Service Superannuation PBA, Canadian Forces Superannuation PBA, Royal Canadian Mounted Police Superannuation PBA).*

Shared Risk Pension Plan (SRPP)

The New Brunswick (NB) SRPP is permitted for its public sector plans and single and multi-employer plans in both unionized and non-unionized environments. While similar to a TBP, the SRPP has some distinct characteristics. SRPPs can be administered by a trustee, board of trustees or non profit corporation.

The SRPP provides a minimum base/target pension, usually based on career average earnings (percentage of each year's earnings). Benefit adjustments (both increases and reductions) are based on pre-set reserve levels and a pre-determined order of adjustments.

SRPPs must have a "funding excess utilization plan" and "funding deficit recovery plan". The "funding excess utilization plan" specifies the minimum funded ratio to be maintained in the plan (which must be at least 105%) before benefit improvements are granted. The "funding deficit recovery plan" specifies the measures that must be implemented if the funded ratio falls below 100% in two successive valuations. Corrective measures may include the reduction/removal of future ancillary benefits, up to a 5% reduction of base benefits, and as a last resort the reduction of past service benefits for all members (including pensioners).

Contributions are determined based on legislated funding requirements for both base/target benefits and enhanced benefit objectives, plus an amount expected to be sufficient to meet risk management goals.

SRPPs are exempt from solvency funding. Annual stress testing must be conducted and a going concern actuarial valuation done at least once every three years.

The NB government civil service plan, legislative assembly and teacher's plan were converted to SRPPs in 2014. Three legal challenges against the government's unilateral decision to convert the public sector plans to a SRPP are pending.

SOLVENCY DEFICIENCY FUNDING RULES

Recommendation

That the current solvency rules are replaced with a regime that requires enhanced going concern funding. Solvency funding would only be required if the plan's solvency ratio is below a threshold level of 85% and solvency funding required only until the solvency ratio has increased to at least the threshold level.

That solvency reserve accounts (SRAs) are permitted as a separate account within a plan fund to hold solvency deficiency payments that can be used to fund shortfalls, or withdrawn by the employer subject to prescribed conditions, if surplus exceeds a prescribed amount.

Rationale for Recommendation

Reducing solvency funding was seen as a priority since it is placing a significant burden on plan sponsors – leading to DB plans winding up or converting to defined contribution plans – usually with less generous benefits for plan members.

However, eliminating all solvency funding was deemed not to be appropriate given some plans wind up in a deficit position and protecting members' benefits is a priority. While there is no specific basis for setting the threshold level to 85%, the commission feels this is a reasonable level. Having a threshold of 85%, instead of the current 100% level, would maintain some degree of funding that does not get too far removed from the wind up liabilities.

Commentary

Market downturns, declines in long-term rates used to calculate solvency liabilities, and improvements in life expectancies have led to increased solvency payments creating significant funding challenges for some plan sponsors. Stakeholders have been lobbying for relaxation or elimination of solvency funding rules. This has resulted in jurisdictions implementing a variety of temporary solvency relief, moratorium or permanent solvency exemptions, leading to claims of differing treatment between jurisdictions.

The commission considered concerns surrounding the current solvency funding rules and reviewed various alternative funding measures including Quebec's revised funding regime and measures set out in the Ontario Ministry of Finance consultation paper titled "Review of Ontario's Solvency Funding Framework for Defined Benefit Pension Plans".

Approaches reviewed included:

- Eliminating solvency funding entirely.
- Replacing solvency funding with enhanced going concern funding by requiring: funding of an excess amount (provision for adverse deviation), shortening the

current period for funding unfunded liabilities, restricting investment assumptions to a maximum amount set by the Superintendent, or basing funding/benefit improvements on the solvency position of the plan.

- Modifying solvency funding rules by requiring: funding based on an average solvency ratio, lengthening the current period for funding solvency deficiencies, permitting the ongoing consolidated and re-amortized of existing solvency deficiencies, or permitting partial funding of deficits or certain benefits.
- Permitting solvency reserve accounts as another tool available to plan sponsors to address funding concerns.
- Adopting Quebec's funding regime that replaces solvency funding with stricter going concern funding requirements, requires funding of a stabilization provision, and provides for a bankers clause that permits access to excess funds.

LOCKING-IN PROVISIONS AND ACCESS TO LOCKED-IN PENSION FUNDS

Recommendation

That Manitoba permit Locked-in Retirement Accounts (LIRAs) and Life Income Funds (LIFs) to be unlocked due to financial hardship. The conditions for financial hardship unlocking would be: eviction for rental arrears, foreclosure, medical/dental expenses not covered by other insurance/government programs and up to $27,650 if an individual's annual income is less than 2/3 of the YMPE (36,867 for 2017).

That full (100%) unlocking of LIRAs and LIFs is permitted at age 65. The unlocked funds should be allowed to be transferred to a RRSP.

The current provisions allowing LIF owners upon attaining age 55 to make a one-time transfer of 50% of his/her LIF to a unlocked prescribed RRIF should be expanded to permit funds from a LIRA to be unlocked under the same conditions.

Rationale for Recommendation

Permitting unlocking due to financial hardship would be consistent with other jurisdictions.

Permitting a one-time transfer of 50% of the funds in a LIRA would reduce the administrative burden of moving funds between the LIRA and LIF in order to unlock 50% of the funds.

The commission is of the view that LIRA and LIF owners will appropriately manage their funds to ensure that they have pension income for life if permitted to fully unlock their LIRA and LIF at age 65.

Commentary

All jurisdictions permit pension funds to be unlocked under certain conditions. Only the amount that can be unlocked and the conditions for unlocking varies. Manitoba's legislation is generally consistent with other jurisdictions in respect of access to locked-in funds due to shortened life expectancy, non-residency and small benefits.

All jurisdictions except British Columbia permit partial unlocking under age 65. The amount that can be unlocked varies from 50% (Alberta, Federal Government, Manitoba, Nova Scotia and Ontario), 40% (Newfoundland and Labrador and Quebec) and a maximum of 25% of the LIF balance (New Brunswick). Saskatchewan is the only jurisdiction that permits 100% of the funds to be unlocked at age 55 or the early retirement date in the pension plan under which the locked-in funds originated.

Between June 10, 2005 and February 2, 2017, there were 17,259 requests by LIF owners to unlock 50% of their LIF. The total amount unlocked to date is approximately $997 million.
Alberta, British Columbia, Nova Scotia, Ontario and the Federal government permit

LIRAs and LIFs to be unlocked in the event of financial hardship. The financial hardship conditions are similar between these jurisdictions.

In Manitoba LIRAs and LIFs are exempt from consideration by social assistance agencies and employment insurance and are protected from creditors. They can be attached to enforce family support obligations.

COMPULSORY PENSION PLAN MEMBERSHIP

Recommendation

That Manitoba continue to require compulsory pension plan membership where there is a pension plan in effect as a condition of employment.

Rationale for Recommendation

The commission is of the view that although Manitoba is the only jurisdiction that requires compulsory membership as a condition of employment, it should be maintained as means of extending pension plan coverage, would not present financial hardship, and would not create excessive savings.

Commentary

Under the PBA a full-time employee must join the pension plan upon satisfying the service criteria for determining compulsory membership which cannot exceed two years.

Non full-time employees must join the plan upon satisfying the service criteria for determining compulsory membership for full-time employees and one of the following:

- 700 hours of employment with the employer in each of two consecutive calendar years;
- earnings of not less than 35% of the Year's Maximum Pensionable Earnings in each of two consecutive calendar years; or
- satisfying the earliest of the above hours or earnings criteria.

Students, members of religious groups, employees hired before 1984 or the effective date of the plan if later and employees receiving pensions that return to work for the same employer are exempt from the compulsory membership requirements.

The commission considered the proposed Pooled Registered Pension Plan (PRPP) legislation which permits employees to opt out of plan membership and to set their contribution rate to 0%, and the changes to the CPP that will increase the employer and employee contribution rate and increase the CPP benefits in making its recommendation.

DIVISION OF PENSIONS ON RELATIONSHIP BREAKDOWN

Recommendation

That the portion of the pension to be divided is determined under *The Family Property Act* (FPA) rather than the PBA, subject to the spouse or common-law partner not receiving more than 50% of the pension earned during the period of the relationship.

Rationale for Recommendation

The proposed change would make Manitoba's legislation consistent with other jurisdictions, give parties the flexibility under the FPA or a prenuptial agreement to decide based on their individual circumstances on the portion of the pension they wish to divide while still providing spousal protection and address the uncertainty caused by a recent court decision that allowed the parties to exempt themselves from the credit splitting provisions under a prenuptial agreement.

Commentary

Under the PBA where there is a court order under the FPA or a written agreement regarding a division of family property, the pension accumulated during the marriage or common-law relationship must be divided on an equal (50/50) basis regardless of the provisions in any order or agreement. Alternatively the parties can opt-out of the division of the pension entirely in the manner prescribed by the PBA.

This requirement reflects the position taken in 1984 that pensions warrant unique treatment, different from other family assets. Irrespective of judicial discretion, pensions should not be allowed to be "traded off" by the parties and 50% of the pension earned during the relationship should automatically be assigned to the spouse or common-law partner.

Manitoba is the only jurisdiction that regulates the portion of the pension that must be divided under the PBA. All other jurisdictions permit the parties under the FPA (or similar legislation) to reach an agreement regarding the portion of the pension to be divided, subject to a maximum amount (normally 50%).

A recent court decision (Dundas v Schafer) found that parties by means of a prenuptial agreement could exempt themselves from the mandatory credit splitting provisions in the PBA. This has created uncertainty and confusion regarding the effect of this decision on the mandatory credit splitting provisions of the PBA.

CLARIFICATION/LEGISLATIVE GAPS

The commission wishes to raise for consideration the following reforms to the PBA.

- That the MUPP provisions are amended consistent with the multi-employer and specified multi-employer provisions in other jurisdictions and the *Income Tax Act* (Canada)
- The provision setting out when an individual ceases to be an active member of a DB plan is amended to provide that a member can choose to suspend membership and contributions at normal retirement age (normally age 65) while remaining employed. Upon subsequent commencement of a pension, the pension accrued to age 65 would be actuarially increased from age 65 to the member's actual retirement date.
- The provision setting out entitlement to ancillary benefits is amended to clarify when an ancillary benefit is vested and must be included in the calculation of commuted values.
- The pension committee requirements are clarified to address that when there is no inactive member in the plan or no inactive member willing to be on a pension committee the position can remain vacant.