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O. Reg. 73/95 amending Regulation 909, R.R.O. 1990 (the Pension Benefits Act Regulation, "PBAR") was effective February 23, 1995. Among other things, this regulation was designed to resolve a conflict among the *Pension Benefits Act* ("PBA"), the PBAR, the *Income Tax Act* (Canada) ("ITA (Canada)") and Income Tax Regulations ("ITR") regarding the funding of designated plans and exempt such plans from PBGF protection and the requirement to pay PBGF levies.

This article deals with designated plan funding issues. More specifically, it discusses the interaction of the Ontario funding requirements, professional standards and the maximum funding valuation ("MFV") requirements.

The general principle is that the PBAR and the *CIA Standard of Practice for Valuation of Pension Plans* effective May 1, 1994 (the "Standard") require that, in the first instance, a valuation must be prepared as if the maximum funding valuation ("MFV") rules did not exist. More specifically, this means that:

(i) valuations must still be prepared to determine the going concern and solvency contributions required; and

(ii) normal costs and schedules of special payments must still be established based on these results without regard to the MFV.

The ITR limits the contributions established in accordance with professional standards and the Ontario regulations. The Standard permits the MFV to be performed *in addition to* the above and based on the legislated methods, assumptions etc. as long as this is clearly disclosed. The PBAR provides that an employer required to make contributions under a designated plan shall not be required to make a payment that is not an "eligible contribution".

It should be noted that the MFV rules effectively prescribe a maximum dollar contribution level for **any** designated pension plan, regardless of the specific plan provisions of a particular pension plan (with the exception of the pension benefit accrual rate). For instance, if a plan does not contain any indexing provision, the MFV still permits the prescribed indexing assumption to be used for that plan. For further information, please contact the Pension Benefits Division of the Office of the Superintendent of Financial Institutions in Ottawa.

Three Valuations May Be Required

The ITA requirement to fund on the basis of a MFV *does not exempt* the actuary from performing a "regular" funding valuation or a solvency valuation. Section 4(1) of the PBAR requires that:

> **4.** (1) Every pension plan shall set out the obligation of the employer or any person required to make contributions on behalf of an employer, to contribute both in respect of the normal cost and any going concern unfunded actuarial liabilities and solvency deficiencies under the plan. R.R.O. 1990, Reg. 909, subsection 4(1).

In addition, Section 16 of the PBAR requires:

> **16.** (1) An actuary preparing a report under section 3, 5.3, 13 or 14 of this Regulation or section 70 of the Act shall use assumptions appropriate for the plan and methods consistent with sound principles established by precedent or by common usage within the actuarial profession and with the requirements of the Act and this Regulation.
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> (2) An actuary preparing a report under section 4 shall use his or her best effort to meet the standards set out in subsection (1).
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> (3) The person preparing a report referred to in subsection (1) or (2) shall certify that it meets the requirements of subsection (1) or (2), as the case may be.
>
> (4) The person preparing a report referred to in subsection (2) shall disclose in the report any respect in which the report does not meet the standards set out in subsection (1). O. Reg. 712/92, section 11.

Subsections 13(1), 14(1) and 17(1) of the PBAR also require that actuarial valuations (going concern and solvency) be prepared on a regular basis.

Taken together, it is clear that an actuarial report for a designated plan may require three valuations to be performed:

(a) a going concern valuation, for the determination of going concern unfunded liabilities;
(b) a solvency valuation to determine the existence of solvency deficiencies; and
(c) a MFV to satisfy the ITR.

Sections 3.02, 6.01B and 6.01C of the Standard clearly indicate that one of the fundamental purposes of an actuarial report is to determine the "actuarial funding contribution". This purpose is consistent with the definition in the PBAR of a "going concern valuation". At the same time however, it may be appropriate to outline the additional contributions or contribution limits imposed by legislation such as for solvency or MFV purposes. However, this would represent more than one separate purpose and separate valuation results would be required for each purpose.

Section 2.05 of the Standard also requires that all plan provisions that materially affect the valuation results must be included in the valuation. The Standard would permit the exclusion or modification of the plan provisions included in the MFV because of legislation. However, it would not be permissible to exclude or modify those provisions for determining the "actuarial funding contribution". Sections 4.06 (Statement as to Assumptions) and 6.02 (Statement as to Methods) of the Standard also allow for deviation from assumptions and methods that are appropriate, **but only from the valuation results provided for the purpose of satisfying legislation, not for the purposes of determining the "actuarial funding contribution".**

After completing the three valuations, the actuary must determine the minimum contribution required by the PBAR as if the MFV was not performed. If the MFV indicates that the eligible contribution is less than the contribution required to adequately fund the benefit (for each year of the period covered by the valuation), section 4(2.1) of the PBAR permits this lower contribution to be made.

However, it may not always be necessary to produce three sets of valuation results. Under many new plan designs for instance, the MFV assumptions and assumed plan provisions may be completely appropriate, eliminating the need for a separate MFV and going concern funding valuation. Similarly, a full solvency valuation may not be required if the actuary can certify that there would be no solvency deficiency if all plan provisions were valued fully in accordance with solvency valuation requirements.

Special Payments for Designated Plans

Since the MFV will limit the funding contributions, there is a possibility that a solvency deficiency will arise due to insufficient contributions. Over a period of years, it is possible that schedules of solvency deficiency payments and going concern unfunded liability payments will be established due to continued annual underfunding.

At each valuation date, a requirement of the PBAR is to establish the present value of the future scheduled special payments in determining any new going concern unfunded liability or new solvency deficiency (or going concern surplus or solvency surplus as the case may be). Implicit in this requirement is the assumption that the special payments were paid as required in the inter-valuation period. However, due to the MFV limitations, there may be cases where the special payments which were actually made were less than those required to fully fund the benefits. In these circumstances, the present value of future special payments should be calculated on the basis of the schedule established at the previous valuation. The underfunding caused by the MFV will then automatically become part of any new solvency deficiency or going concern unfunded liability (or reduce any new going concern surplus or solvency surplus) established at the valuation date. This treatment will then give the employer the regulated allowable period to fund these "experience" deficiencies.

Plans Which Change from Designated to Non-Designated Status

Under certain circumstances, a plan may move from a "designated" status to a "non-designated" status, either due to a change in demographics or via an exemption from the Minister of National Revenue.

Section 14(6.1) of the PBAR states that:

> **14 (6.1)** Where a pension plan ceases to be a designated plan, the administrator of the plan shall cause the plan to be reviewed and a report prepared and certified by an actuary with a valuation date no later than the end of the fiscal year of the plan in which the plan ceased to be a designated plan.

Under normal circumstances, a plan will cease to be a designated plan on December 31, 19xx. For greater certainty, Section 14(6.1) requires that a valuation should be performed as at December 31, 19xx, not at December 31, 19xx+1 if the plan's fiscal year is the calendar year. On the other hand, if the plan's fiscal year end is November 30 for example, then it is permissible to perform the first non-designated plan valuation as at November 30, 19xx+1.

There is some question as to the amount of contributions that would be required in the period between the plan becoming non-designated and the completion and filing of the subsequent actuarial valuation report. For this period of time only, the PCO requires that the minimum contributions prescribed by the Ontario legislation as calculated in the last valuation report filed, on a prospective basis only, be paid without regard to the MFV. In these circumstances, the MFV would no longer limit eligible contributions to fully fund the benefits.

At the first non-designated valuation, there may be significant solvency deficiencies and ongoing unfunded actuarial liabilities, caused by the MFV's. To reduce the impact of immediately funding these deficits, previously scheduled payments may be amortized at the level calculated when each deficiency was established. Any new solvency deficiency or going concern unfunded liability established at this valuation would be funded over 5 years, to 2002 or 15 years as the case may be.

It should also be noted that PBGF protection will begin 5 years after the date that the plan ceases to be a designated plan, but PBGF assessments and filings will be required as at all plan anniversaries on or following the date that the plan ceases to be designated.