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Financial Institutions Commission

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INFORMATION
BULLETIN

BULLETIN NUMBER:	**PENS-08-002**
TITLE:	**Solvency Deficiency Payments**
LEGISLATION:	***Pension Benefits Standards Act Regulation***
DATE:	**August 2008**

PURPOSE

This bulletin is intended to inform pension plan administrators, employers, pension consultants, pension plan members and former members, and other interested parties about recent amendments to the British Columbia Pension Benefits Standards Regulation (the "Regulation"). The amendments will be of particular interest to administrators of defined benefit pension plans. These changes came into effect on June 26, 2008.

The Regulation is made under the *Pension Benefits Standards Act* (the "Act"). The Regulation and the Act are administered by the Superintendent of Pensions.

The regulatory amendments have been made in order to provide flexibility in pension plan funding. The amendments fall into two categories:

- Moratorium on solvency payment for qualifying multi-employer defined benefit pension plans; and
- Allowing the use of letters of credit to fund solvency deficiencies.

Moratorium on solvency payment

This amendment applies only to defined benefit multi-employer negotiated cost pension plan ("MENC plan").

Until now, the Regulation has required that any solvency deficiencies of an MENC plan must be amortized and paid over a period not exceeding 5 years from the review date that established the solvency deficiency.

Under the amendment, the administrator of an MENC plan can apply to the Superintendent of Pensions for a moratorium on the special payment for a period of up to 3 years, if certain conditions are met. These conditions include:

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- The MENC plan continues to meet the prescribed funding and current service costs tests;
- No benefit improvement may be made during the approved moratorium period; and
- The MENC plan has either no unfunded liability, or if there is any unfunded liability, the unfunded liability must be amortized and paid over a period not exceeding 10 years.

In addition, the Superintendent may impose additional conditions on the MENC plan during the moratorium period. These conditions may include requesting the plan cash flow statements, reports on the investment performance of the plan assets and the portfolio composition. Moreover, transfers of the commuted value of benefits from an MENC plan must continue to meet the conditions of section 25 of the Regulation.

At the end of the moratorium period, the administrator must have a valuation report prepared. If any solvency deficiency exists, the administrator must immediately comply with the funding and solvency tests set out in the Regulation.

A plan that is approved for the moratorium may not apply for a further moratorium or extension of the moratorium. However, the plan may request cancellation of the exemption by submitting a new actuarial valuation report.

Using letters of credit to fund solvency deficiencies

Using letters of credit (“LOC”) to fund the solvency deficiencies is now permitted under the Regulation. This amendment applies to employers in plans other than MENC plan.

Under the amendments, an employer may, instead of making some or all of the required solvency deficiency payments, use or continue to use an LOC to secure those solvency deficiency payments for a particular year. The LOC must satisfy certain requirements and the issuer of the LOC must have an acceptable credit rating from certain credit rating agencies.

The LOC must be an irrevocable and unconditional standby LOC that is issued in Canadian currency. The LOC must be made out to the benefit of a fund holder, in trust, for depositing into the pension fund. The issuer can not be the employer or affiliated with the employer.

The LOC must be in accordance with the rules of International Standby Practices ISP98 of the International Chamber of Commerce, and meet all the requirements of the *Income Tax Act* (Canada).

Each LOC can only be used for up to one year. Upon expiration, the LOC can be renewed, replaced, or will expire without replacement. Notification of any renewal, expiration, or termination of the LOC, or any changes to the amount for the LOC must be provided to the Superintendent before the expiration of the original LOC.

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The use of an LOC will not reduce any employer's liability under the prescribed solvency test in the Act, nor can the value of the LOC be used as an asset for the purpose of determining the solvency ratio or the going concern assets.

The amendments to the Regulation are contained in B.C. Regulation 433/93. Printed copies of these amendments, along with the complete Pension Benefits Standards Regulation and *Pension Benefits Standards Act*, are available from:

Crown Publications Inc.
521 Fort Street
Victoria, British Columbia V8W 1E7
telephone: 250 386-4636, fax: 250 386-0221

An electronic copy of the amendments in PDF format is available on the Pensions Department website located at:
http://www.fic.gov.bc.ca/responsibilities/pension/overview.htm.

Also please check this website for more information on the *Pension Benefits Standards Act* and Pension Benefits Standards Regulation.

For further information contact the Financial Institutions Commission:
604 953-5300 or toll free 866 206-3030 (outside local calling area within B.C.)

At the Office of the Superintendent of Pensions, we issue interpretation bulletins to provide technical interpretations and positions regarding certain provisions contained in the *Pension Benefits Standards Act* and Regulations. While the comments in a particular part of an interpretation bulletin may relate to provisions of the law in force at the time they were made, these comments are not a substitute for the law. The reader should consider the comments in light of the relevant provisions of the law in force at the time, taking into account the effect of any relevant amendments to those provisions or relevant court decisions occurring after the date on which the comments were made. Subject to the above, an interpretation or position contained in an interpretation bulletin generally applies as of the date on which it was published, unless otherwise specified.

If you have any questions with respect to the contents of this Information Bulletin, please contact:

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