Fw: OTPP surplus accounting issue - follow-up Q

From: "Hatzis, Len (TBS)" <len.hatzis@ontario.ca>
To: "Petsche, Nadine (TBS)" <nadine.petsche@ontario.ca>, "Veinot, Cindy (TBS)" <cindy.veinot@ontario.ca>, "Kaufman, Paul (TBS)" <paul.kaufman@ontario.ca>
Date: Sat, 17 Sep 2016 10:14:31 -0400

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Marin, Jon <jomarin@osler.com>
Sent: Saturday, September 17, 2016 10:13 AM
To: Allan Shapira
Cc: Rienzo, Douglas; Hatzis, Len (TBS); Steele, Jana
Subject: Re: OTPP surplus accounting issue - follow-up Q

Allan,
Many thanks for getting back to us so quickly with your comments.

Have a great weekend.

Best regards,
Jon

Sent from my iPhone

On Sep 17, 2016, at 10:09 AM, Allan Shapira <allan.shapira@aonhewitt.com> wrote:

> The arbitration issue is a legal issue that I don't think is in my bailiwick.
>
> My reference was to the surplus credits from the term sheet. If there were benefit reductions arising from the application of the term sheet then the members would get a surplus credit from those reductions. I don't think there are any surplus credits so the term sheet provisions are a non-issue.
>
> If the surplus is used contribution reductions for both parties there is an easy symmetry. If the members want to use their surplus for a benefit improvement then the form of the corresponding value to the government has to be addressed in the side agreement. It is only about the form not whether they get a corresponding value.
>
> Allan
>
> Sent from my iPhone
>
> On Sep 16, 2016, at 1:32 PM, Rienzo, Douglas <DRienzo@osler.com> wrote:
>
>> Allan:
>>
>> We have a few more questions about the technical application of the Funding Management Policy, and are hoping you can help us.
>>
>> 1. You mentioned some restrictions on the use of surplus to benefit members. Aside from

the 2013 Term Sheet promises under 6.03 (which you said are not big ticket items, if they end up applying at all), are you referring to the "side agreement" provision in 4.06?

Section 4.06 *Side Agreement*: The commitment value shall be used to provide a surplus distribution referred to in Section 4.04(d) or a temporary benefit improvement referred to in Section 4.04(e) only if the partners have entered into a written agreement governing the manner in which the contributions by the Minister and the Employers may be adjusted to offset any surplus distribution or temporary improvement of benefits that is reflected in the value of the liabilities.

What does that section mean? It refers to an agreement to "offset any surplus distribution or temporary improvement in benefits" – does that mean that the government is supposed to get a contribution reduction of equivalent value if surplus is used for a distribution to members or for a temporary benefit improvement? Are there any other provisions in the FMP like this, that the government can point to as supporting its expectation to benefit from part of the surplus?

2. We understand that every time there is a valuation, the parties must sit down and consider what action to take under Article III, and go to mediation and perhaps to arbitration if they cannot agree (i.e. they follow the procedures set out in sections 74 to 100 of the Partners Agreement). If the plan is in Zone 4 or Zone 5, are the potential actions under Articles IV and V also folded into the mediation/arbitration process? The FMP is unclear on this point, and only seems to refer to that process applying to Article III decisions as set out below:

Section 8.01
Unless the partners mutually agree to the contrary, they shall follow the procedures described in paragraphs 74 to 100 when determining the plan changes arising from Section 3.07.

3. The Partners Agreement contains some guidelines for the arbitrator, in section 92:

92. The award made by the board of arbitration will,
(a) deal only with the contribution rate and/or benefits of the pension plan and otherwise maintain the plan as it is set out in Schedule 1,
(b) comply with the laws of Ontario,
(c) provide that the contributions of the Minister and those employers who are required to contribute are equal to the contributions of members,
(d) be based on the valuation of the plan and the costing of changes to benefits which were prepared by the Board,
(e) ensure that any increase in benefits is adequately funded,
(f) not impair the ability of the Board to fulfil its fiduciary responsibilities,
(g) if it includes benefit improvements, not provide for an increase in the contribution rate paid by plan members greater than .5% of pensionable salary,
provided that all such awards shall be subject to the limitations referred to in subparagraph EE(2) . [emphasis added]

Do you have any idea what the reference to "subparagraph EE(2) means?

Could you perhaps reply by email or, if it's easier, suggest a time when we might chat about this? We have been asked to provide our opinion asap, so if we could speak to you this afternoon that would be ideal. I apologize for the short notice. Thanks, Allan.

Doug

<image001.gif>

Douglas Rienzo
Partner, Pensions & Benefits
Chair, Diversity Committee

416.862.5683 DIRECT
416.862.6666 FACSIMILE

drienzo@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
<image002.gif>

<image003.jpg>
