Email - December 2 2016 - Panel - Notes for consideration.pdf

From: Martin, Paul (FIN)
To: "Patricia O"Malley"; Uros Karadzic; Murray Gold (mgold@kmlaw.ca)
Cc: Tam, Nelson (TBS)
Subject: Panel - Notes for consideration
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Patricia, Uros and Murray,

I may be playing a bit of devil's advocate with my notes and comments, so please be patient with me.

Attached are document excerpts and my notes for discussion Monday.
I am struggling with S3250.059.
This is a significant piece of the Ontario Auditor General's argument.
In that regard, I am not sure that we have sufficiently established arguments that supports recording the asset.
In my notes, comments and questions, I am trying to poke holes into the pension documents and find support for the Provinces position.

I am hoping you will have a chance to look over in advance of Monday's meeting.
Looking forward to a thought provoking discussion.

Thanks,
Paul

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PS 3250 – Retirement Benefits

.059 A key factor in determining a government's expected future benefit from a defined benefit plan with a plan surplus for accounting purposes is the ability of the government to withdraw assets from the plan. The expected future benefit includes amounts to which a government has a legally enforceable right of withdrawal. It excludes any withdrawable plan surplus a government is currently required, or intends, to allocate to employees. A government may not anticipate obtaining a legally enforceable right to withdraw a portion of a plan surplus to which it is not currently entitled, whether on the basis of precedent or otherwise. Accordingly, when withdrawal of plan surplus requires the approval of employees or an appropriate regulatory authority or a court of law, a government excludes any amount subject to this restriction from its expected future benefit until such approval has been obtained. A change in the allocation of surplus between a government and its employees is incorporated into the calculation of the expected future benefit only when it has been agreed to and, when required, approved by the appropriate regulatory authorities.

In the case of OTPP:

Funding Management Policy

- Where contribution rates and/or benefits have not yet been restored, surplus can be used to restore prior year CPI not granted, followed by restoration of any benefit reductions and/or contribution increases. The parties reserve the right to reconsider the order in which the benefits/contribution changes occur based on current relevant factors. (Article III, section 3.04-.06)
- Where temporary improvements may be granted, the Board reports to the partners the extent to which the surplus can be used to reduce current contributions, provide surplus distributions, provide benefit improvements, or any combination of these actions (Article III, section 4.04). Section 4.06 indicates that any surplus distribution can only be made if there is a side agreement between the parties to govern how the contributions by the Minister and the employers may be adjusted to offset the distribution or benefit improvement.
- Where permanent improvements may be made, the Board reports to the partners the extent to which current benefit levels, current contributions, or both can be changed. Section 5.05 indicated that there must be an agreement to govern how the contributions of the Minister and the employers may be adjusted to offset any changes to benefits.
- For valuations after the freeze period (Dec 31, 2017), the OTF has first call on surpluses up to a certain amount, to compensate for costs borne on the employees during the freeze period. The OTF may apply all or part of this amount to change benefits, contributions, or both. (Section 6.02-.03)
- Valuations, which must show that the Plan has enough assets to meet its obligations, must be filed with the Superintendent of Financial Services, but only upon the mutual agreement of the partners. (Section 7.02)

Contributions by the Crown

5. (1) The Minister of Finance shall pay from the Consolidated Revenue Fund an amount equal to contributions under the pension plan payable by the Minister of Education. R.S.O. 1990, c. T.1, s. 5 (1); 1993, c. 39, s. 3 (1); 2005, c. 31, Sched. 21, s. 2 (1).

Matching contributions

(1.1) The total amount of the contributions payable by the Minister of Education and the employers who contribute under the pension plan in respect of any year shall not exceed the amount of contributions payable by or on behalf of active plan members in respect of credited service for that year. 1991, c. 52, s. 3; 1993, c. 39, s. 3 (1); 2005, c. 31, Sched. 21, s. 2 (2).

Deficiency

(3) If in a year the amount of cash and assets capable of sale in the pension fund is insufficient to meet the payments out of the fund in the year after the sale of the assets capable of sale, the Minister of Finance shall pay from the Consolidated Revenue Fund an amount sufficient to make up the deficiency. R.S.O. 1990, c. T.1, s. 5 (3); 1993, c. 39, s. 3 (1).

Solvency deficiency

(7) If a solvency deficiency is disclosed by a solvency valuation under the *Pension Benefits Act*, the Minister of Education may, during the five years following the date of the valuation, make additional contributions to the pension plan. 1991, c. 52, s. 3; 1993, c. 39, s. 3 (1); 2005, c. 31, Sched. 21, s. 2 (4).

Joint management

10. (1) The Minister of Education and the executive of The Ontario Teachers' Federation may enter into an agreement that provides for the following matters:

1. The joint management of the pension plan by the Minister and the executive of the Federation.
2. The composition of the Board, the appointment of the members of the Board and the delineation of the powers and duties of the Board.
3. The sharing of entitlement to gains or surplus under the plan and of liability for deficiencies in the pension fund by the Minister, the employers who contribute under the plan and the active plan members.
4. The amendment of the plan, including the amendment of Schedule 1, by agreement between the Minister and the executive of the Federation.
5. The resolution of disputes between the Minister and the executive of the Federation with respect to amendments to the plan.
6. Any other matter to which the Minister and the executive of the Federation agree. 1991, c. 52, s. 6; 1993, c. 39, s. 5; 2005, c. 31, Sched. 21, s. 4 (1).

<u>Notes:</u>

The funding management policy appears to provide the mechanism for how the partners can negotiate the distribution of surpluses, but does not dictate or establish any specific step or the order in which steps must be taken. While the employer may be able to receive a distribution from a surplus, until agreed upon by the partners, the amount (if any) cannot be determined. Looking at past history, surpluses have tended to benefit employees. Based on that, how has Ontario determined that they would have 50% (presumed?) of the pension asset?

Contribution rates for the employees are established by the Part III of Schedule I of the *Teachers' Pension Act*. The Act specifies that the Minister and the employers shall make employer contributions equal to the required amount, but does not indicate what the required amount is. The funding management policy also does not specify what the Minister or employer amount is to be. According to the OTPP website, the Ontario government and other employers match total annual member contributions. With the exception of employer special payments, this is consistent with past history. From the Act and funding policy document alone, it cannot be determined that the Minister and the employers have an obligation to match employee contributions; however, based on the intended joint governance structure, it may be implied?

Lack of a legislated or agreed upon arrangement where a certain level of employer contributions is required (but employee contributions are) is not consistent with a joint defined benefit plan as contemplated under PS 3250. If the employer does have an obligation to make matching contributions, the provisions of the funding management policy do not appear to allow for a unilateral decision to decrease the contribution rate. How is this mutually shared on an equitable basis?

The funding management policy S4.06 indicates that benefit increases can only take place when there is an agreement between the partners that allows for employer contribution adjustments to offset the liability. Unsure as to what this means?

Teacher's Pension Act:

- S2(2) - confirms the pension plan is defined benefit.
- S5(3) –Deficiency – "… Minister of Finance shall pay from the Consolidated Revenue Fund an amount sufficient to make up the deficiency."
- S10(1) – Joint management – "Minister of Education and the executive of The Ontario Teachers' Federation may enter into an agreement …"

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Act confirms in the document it is a defined benefit plan.

If the Minister of Finance is required to fund a deficiency, how is this meeting the requirements of a Joint Defined Benefit Plan and sharing the risk mutually and equitably?

The sponsors "may" enter into an agreement. Does use of the word "may" mean that this is not required? Does this mean that the Minister can decide not to enter into an agreement? Can the Minister exit the existing management agreement? This may indicate an additional level of control by Government.

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