

Interpretive Guideline#10 Non-Collectively Bargained Multi-Employer Plans

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This guideline is designed to identify what constitutes a non-collectively bargained multi-employer plan (NCBMEP) and what provisions of pension legislation are unique to an NCBMEP under the *Employment Pension Plans Act* (Act) and the *Employment Pension Plans Regulation* (Regulation). This guideline summarizes the legislative requirements which apply to the subject matter, and includes (as applicable) additional details to outline the Superintendent of Pensions (Superintendent) expectations and requirements where such authority has been provided by the Act and Regulation. Finally, the guideline outlines best practices and policies that the Superintendent expects from provincially regulated pension plans.

The Act and Regulation should be used to determine specific legislative requirements. Any legal authority of this Guideline rests in the areas in which the legislation delegates authority to the Superintendent to accept a proposal or action.

Definition

Act 1(1) (ii) “multi-employer plan” means a pension plan administered for employees of 2 or more participating employers that are not affiliates within the meaning of the *Business Corporations Act*;

Act 1(1)(II) “non-collectively bargained multi-employer plan” means a multi-employer plan established other than through a collective agreement, unless under section 28 the Superintendent designates the plan as a collectively bargained multi-employer plan or as a single employer plan, and includes any plan the Superintendent designates as a non-collectively bargained multi-employer plan under section 28;

Act 1(1)(i) “collective agreement” means an agreement between one or more employers and its or their employees, and includes a collective agreement within the meaning of the Labour Relations Code;

Scope of Application

Because multi-employer plans are limited to employers who are independent of and not affiliated with each other, there will be few plans that would qualify as a non-collectively bargained multi-employer plan (NCBMEP).

Plans that are comprised of many employers who are affiliated with or related to another employer (e.g. subsidiaries of a lead employer) cannot be an NCBMEP and will be designated as a single employer plan.

A key requirement of an NCBMEP is that the assets, liabilities and costs must be determined separately for each employer who belongs or participates in the NCBMEP.

Plan Administrator Section 28(b) of the Regulation requires that an NCBMEP must be administered by:

- the participating employer who is identified as the administrator in the participation agreement,
- a board of trustees established under a trust agreement, or
- a body similar to a board of trustees that is acceptable to the Superintendent and has been established through an agreement to administer the plan.

The administrator of an NCBMEP must have the authority under the participation agreement to deal with each participating employer individually as plan rules may differ from one employer to another.

Participating Employers Tracking of participating employers is an important function of the administrator. The administrator must initially report which employers are participating in the plan when the application for registration is filed. Each year thereafter the names of any withdrawing employers as well as any new employers must be reported as part of the filing of the Annual Information Return.

Each employer's contributions must be determined separately when valuations are done and each employer's remittances tracked as they relate to the valuation.

Finally, when a participating employer withdraws, the assets and liabilities related to that employer must be separately identified and disbursed in accordance with Act requirements

Participation Agreements **Act 36(1)** The administrator of a non-collectively bargained multi-employer plan must

- a) enter into a written participation agreement with the participating employers in the plan, which agreement must
 - i. meet the prescribed criteria, and
 - ii. provide for the roles and responsibilities of the parties to the agreement, and
- b) prepare a list of all participating employers who have signed that agreement.

(2) An administrator referred to in subsection (1) must, in the form and manner required by the Superintendent, notify the Superintendent of any participating employer who, after the agreement has been filed, signs the agreement or ceases to be a party to the agreement.

Regulation 29 A written participation agreement referred to in section 36(1) of the Act between an administrator of a non-collectively bargained multi-employer plan and the participating employers in the plan must

- a) set out
 - i. the information and records that must be provided by participating employers to the administrator,
 - ii. when and how the information and records must be provided by participating employers to the administrator, and

- iii. the other duties and obligations to be performed by participating employers,
- b) bind each participating employer to the terms of the plan documents,
- c) make each participating employer responsible for making contributions and special payments to the plan as required under the Act or the plan text documents, and
- d) set out the consequences to a participating employer of failing to meet the terms of the participation agreement, which consequences must be additional to and not in conflict with any consequences set out under the Act for that failure.

Act 48 An employer must, within the prescribed period after becoming a participating employer in a non-collectively bargained multi-employer plan, enter into a participation agreement that complies with section 36(1) with the administrator.

Regulation 56 An employer must, within 60 days after becoming a participating employer in a non-collectively bargained multi-employer plan, enter into a participation agreement that complies with section 36(1) of the Act and section 29 of this Regulation.

Participation agreements set the rules for employers who participate in an NCBMEP. The plan administrator is responsible for seeing that the agreement is drafted and that each employer signs on to the agreement within 60 days of becoming a participating employer. **An employer who has not signed the agreement within the required time may not participate in the plan and any contributions made by such an employer (employer and member contributions) must be returned to the appropriate party.**

A copy of the participation agreement must be filed when the plan is registered or if later, at the time that the plan is designated as an NCBMEP. Each time that the terms of the agreement are amended the revised agreement must be filed with the Superintendent.

At registration, the administrator must also file a list of the employers that have signed on to the agreement.

As a minimum, the participation agreement should deal with:

- who can participate in the plan;
- who the administrator is;
- how the administrator is chosen;
- authority of the administrator to request additional information from a participating employer;
- information that the participating employers must provide to the administrator and when it must be provided;
- how disputes between the administrator and a participating employer will be resolved;
- right of access to information by a participating employer;
- commitment of a participating employer to make contributions and the time lines for making those contributions;
- which, if any of the plan provisions may vary between

employers, and where variance is permitted the appropriate appendix to the agreement showing what a participating employer want to provide differently for;

- removal of a participating employer who fails to comply with the agreement; and
- requirements applicable if a participating employer wishes to cease participating in the plan.

Funding and Remittance Requirements

Under an NCBMEP, each employer's share of the assets and liabilities must be determined and accounted for separately as one employer cannot pay for the cost of another employer's members. This is important while the employer participates and also for determining what must be paid out when an employer withdraws from the plan.

Regulation 62

Section 62 of the Regulation outlines the primary considerations for determining a participating employer's share of assets and liabilities. For the purposes of sections 60 and 61, there must be determined, as at a review date, for each plan contributor to a non-collectively bargained multi-employer plan, and there may be determined, for each plan contributor to a collectively bargained multi-employer plan, his or her share of the following in relation to each benefit formula component of the plan:

- a) the normal actuarial cost applicable to the benefit formula component;
- b) the going concern asset value applicable to the benefit formula component;
- c) the going concern liabilities value applicable to the benefit formula component;
- d) the solvency asset value applicable to the benefit formula component;
- e) the solvency liabilities value applicable to the benefit formula component;
- f) each unfunded liability, if any, of the benefit formula component;
- g) except in the case of a target benefit component, each solvency deficiency, if any, of the benefit formula component;
- h) the actuarial gains or losses, if any, applicable to the benefit formula component;
- i) the solvency reserve account, if any;
- j) the going concern actuarial excess, if any;
- k) solvency actuarial excess, if any.

Act 55 Because each participating employer in an NCBMEP is responsible only for its own assets and liabilities, some of the funding alternatives open to a single employer may, subject to the terms and conditions of the participation agreement, be used by an individual participating employer. For example, a participating employer could use a letter of credit to cover the cost of its solvency payments under the plan.

A participating employer could also, subject to the terms and conditions of the participation agreement, have the administrator establish a solvency reserve account for that employer.

Act 56(1) The participating employers in a pension plan must, within the prescribed period, remit member and participating employer contributions due to the pension fund as follows:

- a) in the case of a single employer plan, to the fund-holder;
- b) in the case of a collectively bargained multi-employer plan, to the administrator;
- c) in the case of a non-collectively bargained multi-employer plan, to the administrator or the fund-holder as set out in the plan text document.

(2) If the administrator of a multi-employer plan is not the fund-holder, the administrator must, promptly after receiving contributions remitted under subsection (1)(b) or (c), remit the contributions to the fund-holder.

Regulation 68(4) Where an actuarial valuation is performed, member and employer contributions with respect to normal cost are not required to change to match the new contribution rate specified in the valuation until the 2nd fiscal year following the valuation.

Plan Provisions

A plan text document **may** include a provision to defer a member's termination of membership for up to one year following termination of employment with a participating employer. This would be done where it is considered reasonable to assume that the member will recommence employment with another participating employer. In this way there is no break in service for the member for determining when he is eligible to join the plan or when he is eligible for any service related ancillary benefits.

Act 1(6) If a member of a non-collectively bargained multi-employer plan ceases employment, the cessation of employment does not constitute termination of the member's active membership in the plan if

- a) the plan text document of the plan establishes a period of not more than one year,
- b) the plan text document provides that a member's cessation of employment does not constitute termination of the member's active membership in the plan if, before the end of the period referred to in clause (a), the member becomes employed in an employment for which a participating employer is required by the plan to make contributions to that plan on the member's behalf, and
- c) the member ceasing employment becomes so employed before the end of the period referred to in clause (a).

A plan text document must include the following two provisions:

1. The plan text document must have eligibility provisions the minimum standard for which is set out in section 29 of the Act.

Act 29(1)(b)

in the case of a non-collectively bargained multi-employer plan,

- i. the employee has completed 2 years of employment with a participating employer, or if the plan text document of the plan

- allows, with 2 or more participating employers, including any temporary absences from that employment in that period, and has not, during that 2-year period, ceased to be employed by the participating employer or participating employers, and
- ii. the employee has earned from that employment, in each of 2 consecutive calendar years, not less than 35 per cent of the Year's Maximum Pensionable Earnings,

2. The plan text document must specify who contributions will be remitted to the administrator or the fund holder, as specified in Act 56(1)(c).

Act 56(1)(c)

in the case of a non-collectively bargained multi-employer plan, to the administrator or the fund-holder as set out in the plan text document.

Where contributions are to be remitted to the administrator, there should be a delinquency monitoring and collections process in place and this should be covered in the participation agreement to ensure that funds are properly tracked and collected.

If, pursuant to the participation agreement, a specific participating employer wants some different provisions to be applicable to their employees, these must be identified in the plan text document with respect to that participating employer.

Disclosure

Section 46(1)(j) of the Regulation specifies documents that must be provided to prescribed persons if they make a request to view them. For an NCBMEP Section 46(1)(j) includes the participation agreement referred to in section 36(1)(a) of the Act and a list of all of the participating employers who have signed that agreement.

Withdrawal of a Participating Employer

When a participating employer withdraws from an NCBMEP, it is a full plan termination with respect to that employer and all Act requirements related to plan termination must be applied.

Act 114 If a participating employer withdraws from a non-collectively bargained multi-employer plan and does not join or establish a successor plan that assumes responsibility for the employer's liabilities under the non-collectively bargained multi-employer plan,

- a) the prescribed provisions of Part 10 apply to that employer as if
 - i. the employer were the only participating employer in the plan, and
 - ii. the employer were terminating that plan, and
- b) the rules prescribed for the purposes of this section apply (see sections 119 to 127 of the Regulation).

The administrator must file a termination report with respect to the participating employer with the Superintendent and once the report has been accepted, all assets and liabilities related to the withdrawing participating employer must be disbursed. This includes the purchase of annuities for pensioners and those electing to retire at the time of withdrawal.

For further information please contact:

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