THE CANADIAN BAR ASSOCIATION
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Proposed Agreement Respecting Multi-Jurisdictional Pension Plans

NATIONAL PENSIONS AND BENEFITS LAW SECTION
CANADIAN BAR ASSOCIATION

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PREFACE

The Canadian Bar Association is a national association representing 37,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

This submission was prepared by the National Pensions and Benefits Law Section of the Canadian Bar Association, with assistance from the Legislation and Law Reform Directorate at the National Office. The submission has been reviewed by the Legislation and Law Reform Committee and approved as a public statement of the National Pensions and Benefits Law Section of the Canadian Bar Association.

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INTRODUCTION

The National Pensions and Benefits Law Section of the Canadian Bar Association (CBA Section) is pleased to provide its views concerning the Canadian Association of Pension Supervisory Authorities (CAPSA) Proposed Agreement Respecting Multi-Jurisdictional Pension Plans (Proposed Agreement). The CBA Section has several hundred members involved in pensions and benefits law from across the country, including counsel to pension and benefit plan administrators, employers, unions, employees and employee groups, trust and insurance companies, pension and benefit consultants, and investment managers and advisors.

The CBA Section supports CAPSA's introduction of the Proposed Agreement, as we believe it would significantly improve the administration of pension plans in Canada. The current Memorandum of Reciprocal Agreement is too vague and does not sufficiently simplify the administration of the many multi-jurisdictional pension plans (MJPPs) that comprise the Canadian pension landscape. In our view, adopting the Proposed Agreement would lead to regulatory simplification that would promote the establishment and continuation of private pension plans.

PART I – GENERAL PROVISIONS

A. Definitions & Schedules

Section 1 provides a definition for an "active member", and contemplates that an individual no longer accruing benefits under the plan could be deemed by the terms of the plan or pension legislation to have the "same status" as an active member of the plan. Under section

3, the plurality of active members would determine the "major authority" for regulating a plan.[1]

Based on the proposed definition of active member, the jurisdiction of individuals who do not accrue benefits might decide major authority status. It is appropriate to consider such individuals in determining the major authority for multi-employer pension plans (MEPPs) where members may frequently move in and out of active participation. However, for plans that are not MEPPs, it does not seem appropriate for individuals not accruing benefits to be a deciding factor in determining the major authority regulator. Also, the phrase "same status" is not entirely clear.

RECOMMENDATION:

The National Pensions and Benefits Law Section recommends that clause (b) of the definition of "active member" be deleted or revised so that, except in the case of MEPPs, members not accruing benefits do not determine the major authority regulator.

The Proposed Agreement does not provide a definition for the terms "jurisdiction", "party", "signatory" and "government", and these terms are relevant for sections 20 to 22 and other sections.

RECOMMENDATION:

The National Pensions and Benefits Law Section recommends that the terms "jurisdiction", "party", "signatory" and "government" either be defined or avoided, if possible.

B. Application

Section 2(1) would apply the Proposed Agreement to any MJPP subject to registration with a pension supervisory authority that has ratified the Proposed Agreement. Section 2(2) provides that the Proposed Agreement does not apply to a pension plan if the pension supervisory authority is not subject to the Proposed Agreement.

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1 The Proposed Agreement leaves details such as the appropriate treatment of members on disability or leave, or those who are retired, to the legislation of the relevant jurisdiction.

Problems may arise if a major authority attempts to apply its legislation to the members of a minor authority that has not ratified the Proposed Agreement. The appropriate response if a major authority ratifies the Proposed Agreement but one or more minor authorities do not should be clarified.

PART II – MAJOR AUTHORITY

A. Determination of the Major Authority

Section 3(7) deals with the determination of major authority status when a plan is first registered. Under this section, the pension supervisory authority that receives the application for registration would notify the administrator as to where the plan should be registered. If the receiving authority is not the major authority, the pension supervisory authority should ensure that both the plan administrator and the major authority are notified.

RECOMMENDATION:

The National Pensions and Benefits Law Section recommends an amendment to section 3(7) so the pension supervisory authority receiving the application will provide notification to the plan administrator and the major authority, if the receiving authority is not the major authority.

B. Role of the Major Authority

Section 4(2)(c) would require a major authority to apply and enforce rules under the Proposed Agreement that are not part of the pension legislation of a jurisdiction. In our view, a pension supervisory authority should apply or enforce rules found in legislation or regulations. If this section is intended to refer to the rules for changes in major authority, then it should be explicit and those rules should be incorporated into legislation. If this section is intended to refer to regulatory policies and practices of a jurisdiction, it should be clarified. It seems inappropriate for rules to apply if they are not part of the pension legislation of a jurisdiction.

RECOMMENDATION:

The National Pensions and Benefits Law Section recommends that section 4(2)(c) be revised or deleted, and that the rules under the Proposed Agreement be incorporated into legislation.

In connection with splitting assets and liabilities of a MJPP, section 4(3)(c) would provide that if pension legislation confers authority on a pension supervisory authority to order or bring about such a split, only that authority may make decisions about assets and liabilities under the particular authority's legislation. In our view, asset and liability splitting is not an appropriate exception to the rule that the major authority will exercise all supervisory functions and powers. This could lead to a requirement for multiple applications to merge or divide a pension plan.

RECOMMENDATION:

The National Pensions and Benefits Law Section recommends that section 4(3)(c) be revised or deleted.

Section 4(4) addresses decisions by a major authority that applies the provisions of the pension legislation of a minor authority's jurisdiction, as described in section 6(1)(b). We suggest an addition to 4(4)(c) to clarify that the major authority should provide information to the minor authority regarding such decisions.

RECOMMENDATION:

The National Pensions and Benefits Law Section recommends that a paragraph be added to section 4(4)(c) such as:

(e) the major authority shall provide notice to the minor authority of a decision relating to the pension legislation of that minor authority.

Section 4(4)(d) indicates that the right to recourse from a major authority's decision shall be determined under the legislation of the minor authority as though the decision had been made under the procedural provisions of that legislation. There does not appear to be any mechanism for appeals relating to procedural matters, either under the legislation of the major authority or the minor authority. Having regard to general administrative law principles suggesting the importance of procedure in some cases, we question the omission of procedural appeals. As currently worded, it is unclear under which rules procedural concerns would be decided.

RECOMMENDATION:

> **The National Pensions and Benefits Law Section recommends that the Proposed Agreement provide for procedural appeals in accordance with the legislation of the major authority.**

C. Loss of Major Authority Status

Section 5(2) provides for the date of loss of major authority status. In the case of MEPPs, members move among employers and often relocate to other jurisdictions on a temporary basis. The section inadequately addresses that reality.

RECOMMENDATION:

> **The National Pensions and Benefits Law Section recommends further consideration of an appropriate process for changing a major authority for a MEPP.**

Section 5(5)(a) requires that all matters related to the plan that are "pending" before the major authority would continue to be dealt with by that authority after the loss of major authority status. We suggest that the use of the word "pending" is too vague, and this section should be improved.

RECOMMENDATION:

> **The National Pensions and Benefits Law Section recommends that section 5(5)(a) be reworded to be more precise.**

Section 5(6)(b) requires a pension supervisory authority that loses its status as the major authority to provide all relevant records and documents to the new major authority. We suggest that the former major authority should keep backup copies of records and documents relevant to the period it acted as major authority, for the sake of completeness.

RECOMMENDATION:

The National Pensions and Benefits Law Section recommends that the Proposed Agreement permit a former major authority to keep copies of all records and documents relevant to its supervision of the MJPP during its period as major authority.

PART III – APPLICABLE LAW

A. Applicable Legislation

Section 6 of the Proposed Agreement provides that for the matters referred to in Schedule B, the law of the major authority's jurisdiction would apply. We believe that this could result in a person in the jurisdiction of a minor authority challenging the Proposed Agreement on constitutional grounds and suggest that careful consideration be given as to whether either substantive or wording changes could reduce the risk of constitutional challenge. Further, all matters in section 1 of Schedule B should fall within the jurisdiction of the major authority in the absence of the Proposed Agreement.

RECOMMENDATION:

The National Pensions and Benefits Law Section recommends steps to further insulate the Proposed Agreement from potential constitutional challenge be considered. The CBA Section also recommends that the Proposed Agreement and enabling legislation of each jurisdiction that becomes a party to it expressly state that the minor authority's jurisdiction adopts the pension legislation of the major authority's jurisdiction for the purpose of the Proposed Agreement.

Depending on the extent to which a jurisdiction proposes to rely upon existing legislative authority as authorization for signing the Proposed Agreement, that legislation may also be subject to constitutional scrutiny. A uniform approach to enabling legislation for the Proposed Agreement would mitigate the possibility of constitutional challenges.

RECOMMENDATION:

> **The National Pensions and Benefits Law Section recommends that a model for uniform enabling legislation concerning the Proposed Agreement be developed.**

Section 6(2)(a) provides that if the legislation of a minor authority requires a particular benefit to be funded, that benefit would have to be funded for plan members in that jurisdiction regardless of the funding requirements of the major authority. This could add to the complexity of plan administration. For example, rules for paying out the full commuted value where the plan is not fully funded differ by jurisdiction. In some jurisdictions, the unfunded portion has to be funded as the payment is made. In practice, many plan administrators currently apply the legislation of the major authority, and we support this approach.

RECOMMENDATION:

> **The National Pensions and Benefits Law Section recommends that section 6(2)(a) be amended to adopt the approach of applying the legislation of the major authority.**

One of the examples in the Explanatory Notes for this section states that grow-in benefits must be funded for the Ontario members who participate in a MJPP that is registered in Nova Scotia. The explanation is that the "general manner" in which the grow-in benefits would be funded would be subject to the funding rules in Nova Scotia's pension legislation. However, that situation is not clearly reflected in the wording of the Proposed Agreement nor in section 6(2)(a).

RECOMMENDATION:

> **The National Pensions and Benefits Law Section recommends that section 6(2)(a) be revised and clarified.**

Section 6(2)(d) provides that where the new major authority does not allow letter of credit (LOC) funding, or where the rules of the new major authority on LOC are different, the employer would have thirty days before the change in major authority to make a cash payment into the pension fund equal to the amount funded by the LOC. For practical purposes, this deadline is too short, even though the Proposed Agreement provides that prior notice be given at least one year before a change of major authority occurs.

RECOMMENDATION:

The National Pensions and Benefits Law Section recommends that section 6(2)(d) be amended to extend the time for a cash payment.

B. Determination of Benefits by Final Location

Section 7 of the Proposed Agreement requires that the “final location” benefit calculation method be used to determine a member's benefit entitlements. Under that method, a member's entire benefit accrual is subject to the pension legislation of the jurisdiction in which the member is located at the time of the determination.

The final location method simplifies administration of a MJPP. However, section 7 could be improved to eliminate ambiguity. For example, “the person's entire benefit accrual shall be deemed to have been subject to the pension legislation that applied to the person at the time the person's benefits were determined” may generate some uncertainty. It could be construed to permit the “checkerboard” approach sometimes applied by Ontario (on the basis that another province's legislation could be considered to have “applied to” that person at the time the person's pension benefits were determined).

RECOMMENDATION:

The National Pensions and Benefits Law Section recommends that section 7 be amended to use the term “final location” and to eliminate any ambiguity.

C. Pension Plan Investments

Section 8 of the Proposed Agreement provides a deadline for compliance with the rules of a new pension supervisory authority. Generally, most MJPPs in Canada are governed by the pension investment requirements found in Schedule III of the federal *Pension Benefits Standards Regulation, 1985* and the *Income Tax Act*, along with common law “prudent investment” concepts. However, some jurisdictional differences in pension legislation may remain.

Requiring that investments made by MJPPs must comply with investment rules of the jurisdiction of the major authority for the plan would result in a more harmonized approach. However, when the major authority changes, the five-year period required to make the transition from one set of pension investment rules to another may be difficult to meet if the investment is not liquid.

RECOMMENDATION:

The National Pensions and Benefits Law Section recommends that section 8 be amended to allow an extension of time for the transition to new investment rules when the major authority changes.

D. Pension Benefits Guarantee Fund

Section 9 of the Proposed Agreement provides that it shall not affect the application or administration of the Pension Benefits Guarantee Fund (PBGF) established under Ontario pension legislation or of any similar fund.[2] Unfortunately the section does not describe situations in which the Proposed Agreement may be affected by PBGF requirements. For example, the PBGF may be affected by the final location rule in section 7.

RECOMMENDATION:

The National Pensions and Benefits Law Section recommends that section 9 be expanded to provide greater clarity.

PART IV – PENSION PLAN ASSET ALLOCATION BETWEEN JURISDICTIONS

A. Applicable Situations

Section 10 of the Proposed Agreement provides situations where the assets of a pension plan shall be allocated between jurisdictions. Neither section 10 nor the Proposed Agreement as a whole adequately prevents a province from claiming that assets should be allocated for its jurisdiction and not another jurisdiction. For example, one province might establish new benefit requirements for members under its jurisdiction that could skew the allocation of

[2] Currently, Ontario is the only jurisdiction in Canada providing a guarantee fund.

assets for that jurisdiction. This could lead to unfairness if the event triggering the allocation occurred shortly after new benefit obligations were established that were not fully funded at the time of the triggering event. Alternatively, the issue could arise if, for example, a jurisdiction reduced funding obligations. For MEPPs, a moratorium on solvency funding or solvency funding relief exists in several provinces.

RECOMMENDATION:

> **The National Pensions and Benefits Law Section recommends that rules be drafted to deal with situations that might skew the allocation of assets for a jurisdiction, including situations affecting temporary solvency funding relief measures, and that special rules be created in respect of MEPPs.**

Section 10(c) applies where the pension legislation requires rights and benefits to be divided into groups such as, for example, when an employer withdraws from a MEPP. Section 10(c) is silent as to when plan wording addresses the issue of division.

RECOMMENDATION:

> **The National Pensions and Benefits Law Section recommends that section 10(c) be amended to add the words "or the plan" after "pension legislation".**

Section 10(f) addresses circumstances not specifically described elsewhere in section 10. However, it would only apply where "assets of the plan related to a jurisdiction are to be paid to an employer that participates in the plan…" which is too narrow. An allocation may also take place where assets need to be allocated or attributed to a group of employees or where assets are not to be paid to an employer.

RECOMMENDATION:

> **The National Pensions and Benefits Law Section recommends that section 10(f) be broadened, for example, by changing the words "an employer that participates" to "an employer or others that participate".**

B. Allocation of Assets

Section 11 allocates assets between jurisdictions in relation to liabilities for benefits, with certain exceptions. Allocation based on liability for benefits may not be appropriate in all circumstances. Section 11(2) provides rules where a specific pension plan may allow an allocation of assets on another basis, but criteria for valid exceptions to those rules are not included. The section also includes several cross references to other sections, making it difficult to understand.

RECOMMENDATION:

The National Pensions and Benefits Law Section recommends that section 11 be made clearer and more flexible, and the exceptions to section 11(2) expanded and clarified.

C. Plans with More than One Participating Employer

Section 13 concerns pension plans that have more than one participating employer. However, under current legislation in most jurisdictions, MEPPs would likely not meet the requirements of the section. It is unclear what rules would apply to a MEPP that does not meet all the section's requirements.

MEPPs may have to be amended and legislative changes may be required in most jurisdictions for a MEPP to fall within the terms of section 13. Additional inequities may arise for a MEPP that has members in more than one jurisdiction. The funding requirements in section 6(2)(a) appear to provide that a minor authority could require benefits in a MEPP to be funded on a solvency basis despite an exception to solvency funding by the major authority. The result could be a disproportionate share of a plan's total contributions being allocated to members in provinces with more stringent solvency funding rules, such as Québec. Additionally, if a plan were wound up, taking into account the priority system under section 14 of the Proposed Agreement, members' benefits in the more stringent jurisdictions would be paid before others. Québec's unique position concerning MEPPs, including employer wind-up liability and the inability to reduce accrued benefits, should be dealt with more effectively in the Proposed Agreement.

RECOMMENDATION:

The National Pensions and Benefits Law Section recommends that section 13 be clarified to either specifically provide that it is not intended to deal with

MEPPs, or if it is intended to deal with MEPPS, it should be revised to deal more fairly with MEPPs.

D. Determination of Portions for Asset Allocation

Section 14 provides complex formulae and detailed priorities to determine portions of assets for section 11. Ideally asset allocation rules should be as simple as possible, and the CBA Section suggests that a simpler methodology should be found in this case.

Conceptually, the asset allocation rules should strive for the value of individual employees' benefits to vary little according to the jurisdiction in which the plan is registered. The rules in section 14 may not achieve this goal. In addition, the section may cause problems for MEPPs exempt from solvency funding in a particular jurisdiction, as described in relation to section 13.

RECOMMENDATION:

The National Pensions and Benefits Law Section recommends that section 14 be either revised or that a separate section be added to the Proposed Agreement to better address the allocation of assets among jurisdictions for MEPPs.

PART V – RELATIONS BETWEEN AUTHORITIES

A. Cooperation

Section 19 deals with reciprocal obligations. We support the commitment to information sharing and mutual assistance.

PART VI – EXECUTION AND COMING INTO FORCE OF AGREEMENT

A. Effective Date

Section 20 provides for an effective date for the Proposed Agreement. If the effective date is not a single date, there will be significant and confusing transitional issues for plan administrators and employers, as well as for regulators.

RECOMMENDATION:

> **The National Pensions and Benefits Law Section recommends that the effective date for the Proposed Agreement should be a single date for all jurisdictions to the extent this is possible. Enabling legislation in each jurisdiction should provide the pension supervisory authority with the power to represent the government concerning the effective date of the final agreement.**

B. Additional Parties

Section 21 requires unanimous consent by governments for another government to become a party to the Proposed Agreement. This process for additional parties could be cumbersome if government approvals are needed.

RECOMMENDATION:

> **The National Pensions and Benefits Law Section recommends that the enabling legislation in each jurisdiction provide the pension supervisory authority with the power to represent the government in adding additional jurisdictions to the Proposed Agreement.**

C. Withdrawal

Section 22 requires written notice for a party to withdraw from the Proposed Agreement. The power of a party to withdraw from the agreement is set out in section 22(1).

The Proposed Agreement is a significant document and those impacted are likely to come to rely on its continuity. Withdrawal from the agreement would be a serious political decision and should not be delegated to a pension regulatory authority.

RECOMMENDATION:

> **The National Pensions and Benefits Law Section recommends that section 22(1) provide that only a government is permitted to withdraw from the agreement.**

Section 22(4) deals with the withdrawal of the major authority from the Proposed Agreement and establishment of a new major authority. Assuming the majority of members are still subject to the laws of the withdrawing authority, it is not clear how section 22(4) would be administered or if the pension plan would need to be registered under two jurisdictions.

RECOMMENDATION:

The National Pensions and Benefits Law Section recommends that the Proposed Agreement specify how a plan would be administered if the majority of members continued to be subject to the laws of an authority that has withdrawn from the Proposed Agreement.

PART VII – IMPLEMENTATION AND TRANSITIONAL PROVISIONS

A. Replacement

Section 26 refers to the current Memorandum of Reciprocal Agreement. Ideally the transition between the Memorandum of Reciprocal Agreement and the Proposed Agreement can be achieved as simply as possible. The transition to or from major authority status may be difficult to achieve for some pension regulators, depending on their experience and resources.

As discussed in the context of Part V of the Proposed Agreement (sections 20 and 21), a smooth transition will require that each jurisdiction have similar legislation in place at the time of the transition. We reiterate our recommendation[3] that uniform enabling legislation be developed for each of the member jurisdictions.

B. Transition

Section 27 deals with transition and coming into force of the Proposed Agreement. A previous major authority should be able to enforce ongoing issues with respect to a pension

3 *Infra*, at 7.

plan previously under its authority. We also support the right of a prior major authority to investigate and enforce its legislation pertaining to acts that occurred before the transition.

However, prior to the Proposed Agreement coming into force, a plan administrator applied to transfer registration based on plurality of plan members, the determination of major authority should not be delayed, but should be considered as a new pension plan registration under section 3(7).

SCHEDULE B – MATTERS COVERED BY INCORPORATED LEGISLATIVE PROVISIONS

Schedule B of the Proposed Agreement sets out all matters for which the legislation of the major authority's jurisdiction would apply.

A. Section 1 – Major Authority's Pension Legislation

Paragraph 2(f) – Notice of amendment

The rules in section 1, paragraph 2(f) of Schedule B concern registration of amendments. There is some overlap with Schedule B, section 1, paragraph 9(b)(iii) which also concerns information to members on amendments.

RECOMMENDATION:

The National Pensions and Benefits Law Section recommends that section 1, paragraph 2(f) and section 1, paragraph 9(b)(iii) of Schedule B be combined.

Paragraph 4(d) - Use of Agents, Delegates and Advisors

Section 1, paragraph 4(d) of Schedule B, provides that legislative provisions of the major authority apply to requirements for the selection, use and supervision of the administrator's agents and advisors and to requirements for agents and advisors. As an example, the Québec *Supplemental Pension Plans Act* prevents service providers and delegates from excluding or limiting their liability. If a change of jurisdiction to (or from) Québec occurred, the limitation or exclusion would become invalid (or permissible). Transitional rules could address this issue.

RECOMMENDATION:

> **The National Pensions and Benefits Law Section recommends transitional rules for paragraph 4(d).**

Paragraphs 6(a) and 6(b) – Contributions and Minimum Funding

Some pension legislation provides accelerated funding of amendments based on solvency ratio. Plan sponsors in those jurisdictions must immediately fund all or part of a plan amendment if the plan's solvency ratio is less than a certain threshold. For example, effective January 1, 2010, the Québec *Supplemental Pension Plans Act* provides that if the plan's solvency ratio is less than 90%, the plan sponsor wishing to amend the plan must pay the lesser of the cost of the amendment and the amount required to bring the solvency ratio to 90%. Any remaining cost of the amendment must be amortized over five years. If the Régie des rentes du Québec is the major authority, such a rule would seem to apply to the entire plan, as it is covered under paragraph 6(b) of section 1 of Schedule B. This means that more restrictive funding rules could apply to the plan sponsor even if the MJPP has members in other jurisdictions.

RECOMMENDATION:

> **The National Pensions and Benefits Law Section recommends that rules for accelerated funding should be addressed in section 1, paragraphs 6(a) and (b) of Schedule B.**

The Québec *Supplemental Pension Plans Act* has introduced a requirement to create a provision for adverse deviation (Pfad) on a solvency basis, scheduled to become effective on January 1, 2010. The method for calculating the Pfad will be determined by regulation. Subject to some exceptions, no additional contributions will be required from the plan sponsor to fund the Pfad. Pfad will be created over time through the accumulation of actuarial gains on a solvency basis. However, what would happen with the Pfad when a change of authority occurs is unclear in the Proposed Agreement, such as when the Régie des rentes du Québec ceases to be the major authority in section 1, paragraphs 6(a) and (b) of Schedule B.

Paragraph 6(c) - Contribution holidays

Section 1, paragraph 6(c) of Schedule B refers to legislative provisions respecting contribution holidays. The issue of contribution holidays may need to be clarified if the legislation is silent or unclear.

Paragraph 7(c) - Pension Fund Investments

Section 1, paragraph 7(c) of Schedule B, outlines what is required of the major authority in terms of investment options for members (including minimum number and type of investment options offered, education and advice available). The *Guidelines for Capital Accumulation Plans* adopted on May 28, 2004 by the Joint Forum of Financial Market Regulators lack the force of law. However, we are not aware of any pension legislation in Canada that provides a complete set of rules for these issues.

Paragraph 9(a)(ii) - Annual or periodic statements

Section 1, paragraph 9(a)(ii) of Schedule B provides that the content of annual or periodic statements would be subject to the pension legislation of the major authority. We agree with this rule as it should simplify the administration of MJPPs.

MATTERS NOT COVERED UNDER SCHEDULE B

Certain areas not specifically mentioned in Schedule B seem to be assigned to the minor authority by default. While it is not easy to determine which matters should be governed by the pension legislation of the major authority and which by the minor authority, we suggest the following areas also be considered.

A. Use of Surplus in an Ongoing Plan

Schedule B does not mention the use of surplus in an ongoing pension plan. Consequently, this issue appears to be subject to the pension legislation of each relevant minor authority. Effective January 1, 2010, the Québec *Supplemental Pension Plans Act* will require that a plan sponsor wishing to fund a plan amendment with surplus assets must act in accordance with the principle of equity, meaning that groups of active members and groups of non-active members and beneficiaries must be treated in an equitable manner. Applying the requirement to Québec members may be difficult since a portion of the surplus related to those members might need to be identified. This could be inconsistent with the treatment of contribution holidays and the Pfad.

RECOMMENDATION:

The National Pensions and Benefits Law Section recommends that the requirement for use of surplus in an ongoing plan be covered under the rules of a major authority in section 1, paragraph 6, *Funding of ongoing pension plans*.

B. Surplus Distribution

Part IV of the Proposed Agreement provides rules for allocating assets among jurisdictions in certain situations. Once assets have been allocated according to the proposed rules, the distribution of assets to individual members remains subject to the applicable pension legislation of the minor authority. Surplus distribution under a MJPP remains a complex issue and rules differ among jurisdictions. This complexity could be addressed by making surplus distribution subject to the rules of the major authority.

RECOMMENDATION:

The National Pensions and Benefits Law Section recommends making surplus distribution subject to the rules of the major authority.

C. Employer's Obligation to Fund a Deficit upon Plan Termination

An issue related to plan termination is the requirement in some pension legislation that the plan sponsor fund the plan deficit upon the plan's termination. Under the Québec *Supplemental Pension Plans Act*, for example, an employer (including an employer in a MEPP) is required to fund the deficit upon the plan's termination.

RECOMMENDATION:

The National Pensions and Benefits Law Section recommends that the obligation of a plan sponsor to fund a deficit upon plan termination should be decided by the legislation of the authority applicable to the member.

D. Procedures for Termination, Merger or Division of MJPP

The Proposed Agreement includes rules about allocating assets among jurisdictions upon plan termination or transfer of assets. However, the procedures for termination, merger or division of a MJPP are not addressed in Schedule B.

RECOMMENDATION:

> **The National Pensions and Benefits Law Section recommends that termination, merger or division of a MJPP should be included as a matter for the major authority to decide in Schedule B.**

CONCLUSION

The CBA Section trusts that our recommendations will be useful as CAPSA proceeds to finalize the Proposed Agreement. We would be pleased to provide further input to assist in this worthwhile endeavour.