


**PROVINCE OF BRITISH COLUMBIA**  
**ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL**

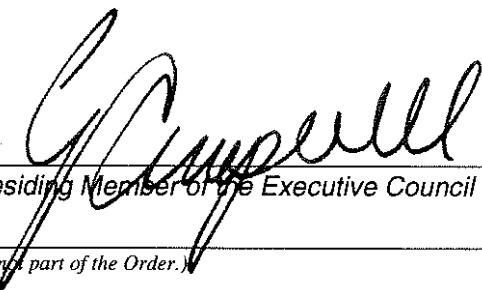
Order in Council No. **501** , Approved and Ordered **JUN 26 2008**

  
\_\_\_\_\_  
Lieutenant Governor

**Executive Council Chambers, Victoria**

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that the Pension Benefits Standards Regulation, B.C. Reg. 433/93, is amended in accordance with the attached Appendix.

  
\_\_\_\_\_  
Minister of Finance

  
\_\_\_\_\_  
Presiding Member of the Executive Council

*(This part is for administrative purposes only and is not part of the Order.)*

**Authority under which Order is made:**

Act and section: Pension Benefits Standards Act, R.S.B.C. 1996, c. 352, s. 74

Other (specify): OIC 1716/93

## APPENDIX

### 1 *Section 1 of the Pension Benefits Standards Regulation, B.C. Reg. 433/93, is amended*

#### *(a) in subsection (1) by adding the following definitions:*

**“conforming letter of credit”** means a letter of credit

- (a) in respect of which all requirements of section 35.1 (3) (a) to (g) are met, and
- (b) which, and the issuing of which, with reference to the circumstances set out in section 35.1, meets all of the requirements of the *Income Tax Act* (Canada);

**“letter of credit”** means a letter of credit that is in accordance with the rules of International Standby Practices ISP98 (publication No. 590) of the International Chamber of Commerce, as those rules are amended from time to time, and, if applicable, includes any renewal, amendment, replacement or confirmation of such a letter of credit or the documents evidencing such a renewal, amendment, replacement or confirmation; ,

#### *(b) in the definition of “solvency asset adjustment” by adding the following paragraph:*

- (b.1) money committed under a conforming letter of credit; , *and*

#### *(c) by adding the following subsection:*

- (5) References in this regulation to confirmation, in the context of a letter of credit, mean the assumption, whether by force of law or of contract, of liability by a Canadian banking subsidiary of a foreign bank for any payments under the letter of credit for which that foreign parent bank is liable but does not pay.

### 2 *Section 35 is amended*

*(a) in subsection (1) by striking out “applies” and substituting “and section 35.1 apply”,*

*(b) in subsection (2) by striking out “set out in this section” and substituting “set out in this section and, to the extent if any applicable, with section 35.1”, and*

*(c) in subsection (3) by striking out “subsection (4),” and substituting “subsection (4) and section 35.1.”*

### 3 *The following section is added:*

#### **Use of letters of credit for meeting solvency deficiencies**

**35.1** (1) In this section:

**“acceptable rating”** means a current rating, given by a credit rating agency to a bank or credit union, which rating is at least equal to at least one of the following ratings:

(a) A, from Dominion Bond Rating Service Limited;

(b) A, from Fitch Ratings;

(c) A2, from Moody's Investors Service;

(d) A, from Standard & Poor's Ratings Services;

**"credit rating agency"** means an agency referred to in any of paragraphs (a) to (d) of the definition of "acceptable rating" or any other similar agency approved by the superintendent for the purposes of this section;

**"expiry"** means the time when a letter of credit expires;

**"holder"** means the fund holder to whose benefit the letter of credit in question is made out pursuant to subsection (3) (c), or that fund holder's successor;

**"issuer"** means a bank or credit union that has an acceptable rating and is a member of the Canadian Payments Association;

**"obligated issuer"** means an issuer that is contractually liable for payment of money under a conforming letter of credit if that payment is demanded under the letter of credit;

**"solvency deficiency payments"** means the special payments under section 35 (3) (c);

**"termination report"** means the report under section 54 (3) of the Act;

**"transfer deficiency"** has the same meaning as in section 25 (1).

(2) An employer, other than an employer under a defined benefit multi-employer negotiated cost plan, may, instead of making some or all of the required solvency deficiency payments, use or continue to use a letter of credit to secure those solvency deficiency payments for a particular year if and only if the letter of credit and the bank or credit union obligated under the letter of credit satisfy the requirements of this section.

(3) A letter of credit may not be used for the purposes of section 35 or this section, and therefore lacks the potential to qualify as a conforming letter of credit, unless the letter of credit

(a) is an irrevocable and unconditional standby letter of credit,

(b) was issued by a bank or credit union that is an issuer and the issuer is not the employer or affiliated with the employer within the meaning of section 2 of the *Business Corporations Act*,

(c) is made out to the benefit of a fund holder in trust for the depositing of it, and of any money paid under it, into the pension fund,

(d) specifies the time from when it becomes effective and, subject to subsection (5), its expiry,

(e) makes the issuer that issued it contractually liable, if payment is demanded under it, for paying out money under its terms,

(f) is issued in Canadian currency, and

(g) provides that

- (i) on the demand of payment under it, the obligated issuer will, immediately after that demand, pay to the holder the amount, not exceeding its face amount, that is demanded, without further inquiry,
  - (ii) the insolvency or bankruptcy of the employer is to have no effect on the rights or the obligations of the obligated issuer or the holder under it,
  - (iii) immediately following each expiry time, it will, in accordance with subsequent provisions of this section, be renewed, replaced or allowed to expire without renewal or replacement,
  - (iv) if the obligated issuer decides not to renew the letter of credit on its expiry, the obligated issuer will notify the administrator, the holder and the superintendent of that decision at least 90 days before that expiry,
  - (v) it may not be assigned, and
  - (vi) it may not be amended, except
    - (A) on renewal, or
    - (B) if there is a change of holder, to reflect that change.
- (4) When a letter of credit intended as a conforming letter of credit is to be initially issued, the administrator must, at least 90 days before the day when the next in the series of solvency deficiency payments following its issue date falls due, forward both of the following to the superintendent:
- (a) the executed letter of credit or a certified copy of it;
  - (b) a written statement from the administrator that
    - (i) the letter of credit meets all of the requirements of subsection (3) (a) to (g),
    - (ii) the letter of credit is in accordance with the rules of International Standby Practices ISP98 (publication No. 590) of the International Chamber of Commerce, as those rules are amended from time to time, and
    - (iii) the letter of credit, and the issuing of it, with reference to the circumstances set out in this section, meets all of the requirements of the *Income Tax Act* (Canada).
- (5) A conforming letter of credit must expire no later than one year from the time it takes effect.
- (6) At least 90 days before an existing conforming letter of credit is due to expire, an administrator must do the following:
- (a) if, at expiry, the letter of credit will be renewed,
    - (i) forward the executed renewing letter of credit, or a certified copy of it, together with the written statement referred to in subsection (4) (b), to the superintendent,
    - (ii) notify the holder of the transmission under subparagraph (i), and
    - (iii) follow the process set out in subsection (7), if applicable;
  - (b) if, at expiry, the letter of credit will be replaced,

- (i) forward the executed replacing letter of credit, or a certified copy of it, together with the written statement referred to in subsection (4) (b), to the superintendent,
    - (ii) notify the holder of the transmission under subparagraph (i), and
    - (iii) follow the process set out in subsection (7), if applicable;
  - (c) if, at expiry, the letter of credit will be allowed to expire without renewal or replacement,
    - (i) notify the superintendent and the holder of that fact, and
    - (ii) follow the process set out in subsection (8), if applicable.
- (7) Subject to subsection (14) (b), if the amount for which a conforming letter of credit is to be renewed or replaced will be less than the amount covered by the letter of credit to be renewed or replaced, the administrator must
- (a) provide to the superintendent, together with the documents sent to the superintendent under subsection (6) (a) (i) or (b) (i), a current actuarial valuation report showing that after the reduction the funding requirements of section 35 and this section will continue to be met,
  - (b) provide to the superintendent, together with the documents sent to the superintendent under subsection (6) (a) (i) or (b) (i), proof that the employer has remitted to the pension plan all or a portion of the amount covered by the letter of credit to be renewed or replaced, or
  - (c) implement a combination of paragraphs (a) and (b),
- in which case the amount of the renewing or replacing letter of credit may be reduced to the extent indicated in the actuarial valuation report referred to in paragraph (a), reduced by the amount of the employer's remittance referred to in paragraph (b) or reduced by the combination of both of those, as the case may be.
- (8) If a conforming letter of credit is to be allowed to expire without being renewed or replaced, the administrator must provide to the superintendent, together with the notification referred to in subsection (6) (c), a current actuarial valuation report showing that after expiry the funding requirements of section 35 will continue to be met.
- (9) As soon as practicable after receiving an executed letter of credit under subsection (4) or (6) (a) or (b), or a certified copy of it, as the case may be, the superintendent must notify the administrator acknowledging that receipt.
- (10) If, within 30 days after being notified by the superintendent that an executed letter of credit is not a conforming letter of credit, the administrator does not forward to the superintendent an executed new or replacing letter of credit that is a conforming letter of credit, or a certified copy of one that is a conforming letter of credit, the employer must immediately make the solvency deficiency payments in accordance with section 35 (3) (c).
- (11) The administrator must forward the original of the executed conforming letter of credit to the holder, together with a copy of the superintendent's acknowledgement of receipt, within the following time periods:

- (a) if the letter of credit is being initially issued, on or before the day when the first in the series of solvency deficiency payments to which the letter of credit relates following its issue date falls due;
  - (b) if the letter of credit is renewing or replacing another, at least 15 days before its expiry.
- (12) Despite anything in this section, if the bank or credit union obligated under a conforming letter of credit ceases to be an issuer, the letter of credit may continue to be used for all the purposes of this section as a conforming letter of credit, and that bank or credit union is deemed to remain an obligated issuer, until expiry, but the letter of credit may not be renewed.
- (13) If, 14 days before expiry, the holder
  - (a) has not received any document that the administrator is required to send to the holder under subsection (6) and, so far as applicable, subsection (7), (8) or (11), and
  - (b) has not received notice that the pension plan is or is about to be terminated,
 then the holder must, on the next business day, demand payment for the full amount of the letter of credit.
- (14) If the pension plan is or is about to be terminated, the administrator must
  - (a) maintain the letter of credit in force, and
  - (b) if necessary, renew or replace it without any decrease in the amount covered, and thereafter maintain it,
 until the superintendent has approved the termination report and the administrator has received permission to cancel under subsection (15) (a), the employer has made the remittance under subsection (16) or the demand for payment under subsection (17) has been made.
- (15) At the time of notifying the administrator that the termination report is approved, the superintendent must also notify the administrator, with a copy to the holder, that, based on that report,
  - (a) the plan is fully solvent and the letter of credit may be cancelled, or
  - (b) there is still a solvency deficiency.
- (16) If subsection (15) (b) applies, the superintendent must state in both the notification to the administrator and the copy to the holder the amount of the solvency deficiency that must be remitted by the employer to the holder.
- (17) If applicable, the administrator must, within 14 days after receiving notification from the superintendent of a solvency deficiency under subsection (15) (b), ensure that the holder has received the amount so notified and the holder, if the remittance is not so received, must, on the next business day after that 14-day period ends, demand payment for the lesser of the full amount of the letter of credit and the amount specified in that notification.
- (18) A demand for payment under a conforming letter of credit is to be made by the holder in writing or in such other form as the letter of credit allows.

- (19) Nothing in this section is to be taken to reduce any employer's liabilities under section 51 of the Act.
- (20) Subject to subsection (18), a notification that is to be given to or by the superintendent or any other person under this section must be given in writing.
- (21) The employer must either
  - (a) make interest payments related to the solvency deficiency payments secured by the conforming letter of credit monthly within 30 days after the end of the month to which the interest payments relate and at the interest rate used to establish each solvency deficiency, or
  - (b) ensure that the interest payments referred to in paragraph (a) are included in the amount covered by the letter of credit.
- (22) The employer must pay any fees related to the establishment and maintenance of the conforming letter of credit separately, and those fees may not be included in the letter of credit or charged as a cost to the pension plan.
- (23) When a person becomes entitled to receive a benefit payment, other than an ongoing pension payment, from the pension plan and while some or all of the solvency deficiency payments remain covered by a conforming letter of credit, the employer must
  - (a) make one lump sum payment to the plan in an amount that is equal to any transfer deficiency that exists and to the extent that it relates to the person, before making the payment to or on behalf of the person, or
  - (b) include a payment in the same amount in the next remittance of contributions.
- (24) A conforming letter of credit is not an asset of the plan for the purposes of determining its solvency ratio or the going concern assets.

**4 Section 37 is renumbered as section 37 (1) and the following subsection added:**

- (2) For the purposes of subsection (1) (c) and (d) and section 43 of the Act, provision of a conforming letter of credit to the fund holder meets the requirement for the remitting of such amount of contributions as is covered by the letter of credit.