

Her Excellency the Governor General in Council, on the recommendation of the Minister of Finance, pursuant to the definition "surplus"<sup>a</sup> in subsection 2(1), subsection 9(1), paragraph 10.1(2)(b)<sup>b</sup> and section 39<sup>c</sup> of the *Pension Benefits Standards Act, 1985*<sup>d</sup>, hereby makes the annexed *Air Canada Pension Plan Solvency Deficiency Funding Regulations*.

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<sup>a</sup> S.C. 1998, c. 12, s. 1(4)

<sup>b</sup> S.C. 1998, c. 12, s. 10

<sup>c</sup> S.C. 2001, c. 34, s. 76

<sup>d</sup> R.S., c. 32 (2nd Supp.)

## AIR CANADA PENSION PLAN SOLVENCY DEFICIENCY FUNDING REGULATIONS

### INTERPRETATION

1. (1) The following definitions apply in these Regulations.

"Air Canada pension plan" or "plan" means a defined benefit plan in respect of which Air Canada is the administrator and that was established before January 1, 2004.  
(*régime de pension d'Air Canada ou régime*)

"beneficiary representative" means a union representative or a court-appointed representative of the members or former members of a plan or of the other beneficiaries of a plan. (*représentant des bénéficiaires*)

"initial order" means the order issued on April 1, 2003 in respect of Air Canada under section 11 of the *Companies' Creditors Arrangement Act*. (*ordonnance initiale*)

"initial solvency deficiency" means the solvency deficiency of a plan emerging as at January 1, 2004. (*déficit initial de solvabilité*)

"Protocol" means the Air Canada/OSFI Pension Funding Relief Protocol of May 14, 2004 entered into by Air Canada and the Office of the Superintendent of Financial Institutions. (*protocole*)

(2) Except as otherwise provided in these Regulations, expressions used in these Regulations have the same meaning as in the *Pension Benefits Standards Regulations, 1985*.

### APPLICATION

2. These Regulations apply in respect of Air Canada pension plans.

### FUNDING

3. The funding of a plan shall be considered to meet the standards for solvency if the funding is in accordance with Part 1 or 2.

PART 1

SOLVENCY STANDARDS FOR AIR CANADA PENSION PLANS

*Information to Be Filed With Superintendent*

4. An initial solvency deficiency and any subsequent solvency deficiency of a plan may be funded in accordance with this Part if the following information is filed with the Superintendent not later than the day on which the initial order expires:

(a) an actuarial report that values the plan as at January 1, 2004;

(b) a statement by Air Canada confirming that the beneficiary representatives have consented on behalf of the members, former members and other beneficiaries of the plan to the funding of the solvency deficiency of the plan in accordance with these Regulations;

(c) a certified copy of a resolution of the board of directors of Air Canada agreeing to the funding of the solvency deficiency of the plan in accordance with these Regulations;

(d) a copy of the promissory note issued in respect of the plan and referred to in section 4 of the Protocol as well as a copy of the security agreement referred to in paragraph 5(b) of the Protocol; and

(e) confirmation by Air Canada that contributions equal to the normal cost of the plan required to be remitted on or before the day on which these Regulations come into force and, if applicable, the special payments referred to in paragraph 11(c) of the Protocol have been remitted to the pension fund.

*Exemption*

5. (1) If the information referred to in section 4 is filed with the Superintendent in respect of a plan in accordance with that section, the plan is exempt from the application of subsections 8(1) and (2) of the Act in respect of the following amounts:

(a) any special payments, employer contributions or other amounts accrued or due to the pension fund before January 1, 2004; and

(b) the principal outstanding amount of a promissory note, issued in respect of the plan and referred to in section 4 of the Protocol, if that amount becomes due and payable in full as a result of the occurrence of an event of default under the terms of the promissory note.

(2) For greater certainty and except as described in subsection (1), a plan is not

exempt from the application of subsections 8(1) and (2) of the Act in respect of any special payments, contributions or other amounts that are accrued or due to the pension fund under these Regulations.

*Application of Pension Benefits Standards Regulations, 1985*

6. If the information referred to in section 4 is filed with the Superintendent in respect of a plan in accordance with that section, section 9 of the *Pension Benefits Standards Regulations, 1985* applies in respect of that plan except as otherwise provided in this Part.

7. (1) For the purposes of this Part, paragraph (a) of the definition "solvency deficiency" in subsection 9(1) of the *Pension Benefits Standards Regulations, 1985* shall be read as follows:

(a) the value of the assets of the plan, determined on the basis of market value,

(2) In this Part, for the purpose of paragraph (d) of the definition "solvency deficiency" in subsection 9(1) of the *Pension Benefits Standards Regulations, 1985*, the present value of any special payment calculated before January 1, 2004 and the present value of any special payment required to be made in respect of an initial unfunded liability emerging as at January 1, 2004 shall be zero.

(3) For the purposes of this Part, the definition "solvency deficiency" in subsection 9(1) of the *Pension Benefits Standards Regulations, 1985* shall be read as including the following after paragraph (d):

(d.1) the present value of any special payment referred to in section 9 or 13 of the *Air Canada Pension Plan Solvency Deficiency Funding Regulations*,

(d.2) the present value of any special payment required to be made during the period beginning on January 2, 2004 and ending on December 31, 2013 in respect of an initial unfunded liability of a plan emerging after January 1, 2004,

(4) Subject to subsection 147.2(2) of the *Income Tax Act*, subsection 9(7.1) of the *Pension Benefits Standards Regulations, 1985* does not apply in respect of a plan that is funded in accordance with this Part.

*Solvency Ratio*

8. (1) The initial solvency deficiency of a plan shall be calculated as if any applicable special payments referred to in paragraph 11(c) of the Protocol had been remitted to the pension fund on December 31, 2003.

(2) The solvency ratio of a plan as at January 1, 2004 shall be calculated after

determining the initial solvency deficiency in accordance with subsection (1).

### *Funding — Special Payments*

9. (1) The following definitions apply in this section.

"adjusted aggregate amount" means, in respect of a plan year, the adjusted aggregate amount of annual special payments for that plan year as determined in accordance with subsection (4) or in accordance with subsections (4) and (5), as applicable. (*total rajusté*)

"unadjusted aggregate amount" means, in respect of a plan year, the unadjusted aggregate amount of annual special payments set out in the schedule for that plan year. (*total non rajusté*)

(2) Notwithstanding subsection 9(4) of the *Pension Benefits Standards Regulations, 1985*, an initial solvency deficiency of a plan shall be funded over a period not exceeding 10 years, beginning with the 2004 plan year and ending with the 2013 plan year, by an annual special payment to the pension fund in each of those years determined in accordance with subsections (3) to (5).

(3) The amount of an annual special payment in respect of a plan for a plan year shall be determined by multiplying the adjusted aggregate amount for that plan year by the ratio of the initial solvency deficiency of the plan to the aggregate amount of the initial solvency deficiencies of all of the plans.

(4) Subject to subsection (5), the adjusted aggregate amount in respect of a plan year set out in column 1 of the schedule shall be determined by multiplying the unadjusted aggregate amount set out for that plan year in column 2 by the greater of

(a) one, and

(b) the ratio of the aggregate amount of the initial solvency deficiencies of all of the plans to the sum of the present values, as at January 1, 2004, of each of the unadjusted aggregate amounts set out in column 2.

(5) If the adjusted aggregate amount determined in accordance with subsection (4) for the 2004 plan year is less than the result obtained by multiplying the assumed interest rate used in the valuation of the liabilities of the plans for the purpose of calculating their initial solvency deficiencies by the aggregate amount of the initial solvency deficiencies of all of those plans,

(a) the adjusted aggregate amount for the 2004 plan year shall be an amount equal to that result; and

(b) the adjusted aggregate amount for each of the 2006, 2007 and 2008 plan years may be reduced by an equal amount for each of those plan years such that the sum of the present values, as at January 1, 2004, of each of the adjusted aggregate amounts determined for the 10 plan years referred to in subsection (2) is the same as it would be if it were calculated without reference to paragraph (a).

(6) Air Canada shall, not later than 14 days after the expiration of the initial order, provide the Superintendent with a payment schedule setting out for each plan the amount of the annual special payment required to be made in each of the 10 plan years referred to in subsection (2) calculated in accordance with subsections (3) to (5).

(7) Notwithstanding subsection 9(14) of the *Pension Benefits Standards Regulations, 1985*, the annual special payment referred to in subsection (2) in respect of the 2004 plan year shall be made in two installments as follows:

(a) the first installment, in an amount equal to 75 per cent of that annual special payment, shall be remitted not later than the later of

(i) October 30, 2004, and

(ii) 30 days after the day on which these Regulations come into force; and

(b) the second installment, in an amount equal to 25 per cent of that annual special payment, shall be remitted not later than January 30, 2005.

(8) For greater certainty, the following special payments are not required to be paid in respect of a plan in a plan year:

(a) any special payment required to liquidate an initial unfunded liability emerging as at January 1, 2004 that would have been required to be paid in respect of that plan year under subsection 9(3) of the *Pension Benefits Standards Regulations, 1985*; and

(b) any special payment calculated in accordance with an actuarial report filed with the Superintendent before January 1, 2004 that would have been required to be paid in respect of that plan year under subsection 9(3) or (4) of the *Pension Benefits Standards Regulations, 1985*.

**10.** For the purposes of the *Pension Benefits Standards Regulations, 1985*, a payment that is required to be made in respect of a plan by section 9 or 13 or subsection 16(2) shall be considered a special payment.

**11.** A plan shall be funded in each plan year by the special payments referred to in sections 9 and 13 in addition to the contributions and any applicable special payments set out in subsection 9(7) of the *Pension Benefits Standards Regulations, 1985*.

### *Actuarial Gain*

**12.** Until the 2006 plan year, an actuarial gain shall not be used to reduce the amount of any special payments due to the pension fund, but it may be applied to reduce the amortization period or periods applicable to the payment of a solvency deficiency or used to reduce, on a *pro rata* basis, the special payments required to fund the solvency deficiency during any of the 2006 to 2013 plan years.

### *Solvency Deficiency Emerging After 2004 Plan Year*

**13.** Except as provided in section 15, a solvency deficiency that emerges in a plan year that begins after the day on which these Regulations come into force shall be funded by equal annual special payments sufficient to liquidate the solvency deficiency over a period not exceeding the greater of

- (a) the number of years remaining in the payment schedule referred to in section 9, calculated from the beginning of the plan year in which the solvency deficiency emerges, and
- (b) five years.

### *Amendments to a Plan*

**14.** For the purpose of paragraph 10.1(2)(b) of the Act, the prescribed solvency ratio level is the solvency ratio calculated on the basis of the most recent actuarial report filed with the Superintendent in accordance with subsection 12(3) of the Act.

### *Increase in Benefits*

**15.** (1) A solvency deficiency that emerges after the day on which these Regulations come into force and that results from an increase in pension benefits, pension benefit credits or other benefits payable under a plan shall be funded in accordance with subsection 9(4) of the *Pension Benefits Standards Regulations, 1985*.

(2) The present value of the special payments required to fund the solvency deficiency referred to in subsection (1) shall be included for the purpose of paragraph (d) of the definition "solvency deficiency" in subsection 9(1) of the *Pension Benefits Standards Regulations, 1985*.

### *Termination of Plan With a Deficit*

**16.** (1) In this section, "deficit" means the amount by which the liabilities of a plan exceed its assets.

(2) Subject to subsection (3), if a plan is fully terminated and the plan has a deficit as at the day of the termination, the annual payments due in respect of the principal outstanding amount of the promissory note that is issued in respect of the plan and referred to in section 4 of the Protocol shall be remitted to the pension fund as they become due and payable, until such time as the principal outstanding amount of that promissory note is paid or the deficit is eliminated, whichever is earlier.

(3) If the principal outstanding amount of the promissory note referred to in subsection (2) becomes due and payable in full as a result of the occurrence of an event of default under the terms of the promissory note, the annual payments referred to in that subsection are not required to be remitted.

## PART 2

### ALTERNATE SOLVENCY STANDARDS FOR AIR CANADA PENSION PLANS APPLICABLE ON ELECTION

#### *Election*

**17.** (1) Air Canada may elect to fund a plan, beginning on the first day of a plan year, in accordance with this Part by giving written notice of the election to the Superintendent not later than four months after the beginning of that plan year.

(2) The notice of election referred to in subsection (1) shall indicate whether or not the plan has a surplus as at the first day of the plan year in respect of which the election is made.

#### *Application of the Pension Benefits Standards Regulations, 1985*

**18.** If the election referred to in subsection 17(1) is made in respect of a plan, section 9 of the *Pension Benefits Standards Regulations, 1985* applies in respect of that plan except as otherwise provided in this Part.

#### *Manner of Determining Surplus*

**19.** For the purposes of this Part, a surplus in respect of a plan shall be determined in the manner prescribed by subsection 16(1) of the *Pension Benefits Standards Regulations, 1985* in respect of a plan that has been fully terminated and, in making that determination, the value of the assets of the plan shall be determined on the basis of market value.

#### *Plan With a Surplus*

**20.** If the election referred to in subsection 17(1) is made in respect of a plan that has



a surplus as at the first day of the plan year in respect of which the election is made, Part 1 continues to apply in respect of that plan, except that sections 4, 6 to 9 and 11 to 15 cease to apply in respect of the plan on that day.

*Plan Without a Surplus*

**21.** If the election referred to in subsection 17(1) is made in respect of any of the 2005 to 2009 plan years of a plan that does not have a surplus as at the first day of the plan year in respect of which the election is made, Part 1 continues to apply in respect of that plan, except that

(a) Air Canada shall have an actuarial report prepared in respect of the plan as at that day;

(b) for the purpose of that actuarial report, the present value of the special payments referred to in sections 9 and 13 shall be zero;

(c) the solvency deficiency disclosed by the actuarial report, if any, shall be considered to have emerged as at the valuation date of the actuarial report;

(d) the special payments required to be made to the pension fund in accordance with sections 9 and 13 shall continue to be made until the first special payment required to fund the solvency deficiency referred to in paragraph (c) is remitted to the pension fund; and

(e) except as otherwise provided in paragraph (d), sections 4, 6 to 9 and 11 to 15 cease to apply in respect of the plan on the first day of the plan year in respect of which the election is made.

**22.** (1) For the purposes of this section, paragraph (a) of the definition "solvency deficiency" in subsection 9(1) of the *Pension Benefits Standards Regulations, 1985* shall be read as follows:

(a) the value of the assets of the plan, determined on the basis of market value,

(2) Subject to section 23, if the election referred to in subsection 17(1) is made in respect of any of the 2010 to 2013 plan years of a plan that does not have a surplus as at the first day of the plan year in respect of which the election is made, Part 1 continues to apply in respect of that plan, except that

(a) a solvency deficiency that is required to be funded in accordance with section 9 or 13 shall not be reamortized;

(b) the present value of the special payments referred to in sections 9 and 13 shall be included for the purpose of paragraph (d) of the definition "solvency deficiency" in

subsection 9(1) of the *Pension Benefits Standards Regulations, 1985*; and

(c) sections 4 and 6, subsection 7(4) and sections 8, 12 and 15 cease to apply in respect of that plan on the first day of the plan year in respect of which the election is made.

**23.** If the aggregate amount of the remaining special payments required to be made in accordance with sections 9 and 13 in respect of a plan referred to in subsection 22(2) is remitted to the pension fund not later than the end of the second quarter of the plan year in respect of which the election is made,

(a) section 22 does not apply in respect of that plan; and

(b) Part 1 continues to apply in respect of that plan, except that sections 4, 6 to 9 and 11 to 15 cease to apply in respect of the plan on the first day of the plan year in respect of which the election is made.

CEASING TO BE IN FORCE

**24.** These Regulations cease to be in force on December 31, 2013.

COMING INTO FORCE

**25.** These Regulations come into force on the day on which the initial order expires provided that that order expires before January 1, 2005.

SCHEDULE

*(Subsections 9(1) and (4))*

SCHEDULE OF SPECIAL PAYMENTS

Item	Column 1 Plan Year	Column 2 Unadjusted Aggregate Amount of Annual Special Payments (in millions of dollars)
1.	2004	65
2.	2005	85
3.	2006	201
4.	2007	181
5.	2008	181
6.	2009	184
7.	2010	184
8.	2011	184
9.	2012	184
10.	2013	184