BC Financial Services Authority
BCFSA

Guideline

Multi-Employer Pension Plans – Best Practices

Date: June 6, 2023

Distribution: Pension Plan Administrators and Service Providers

TABLE OF CONTENTS

INTRODUCTION

The purpose of this Guideline is to inform pension plan administrators and stakeholders of best governance practices of multi-employer pension plans registered in B.C.

The objectives are:

- To promote the adoption by plan administrators of policies and procedures designed to manage the various types of risk faced by pension plans and their members; and
- To protect and safeguard the rights and benefits of pension plan members.

This Guideline complements the regulatory information issued by the Superintendent of Pensions (“Superintendent”) and other industry leading practices relevant to the funding, risk management, and governance of pension plans (see Appendix).

The best practices outlined in this document should not be considered an exhaustive list; **different types and sizes of plans may also require different governance practices**. While this Guideline focuses on best governance practices for multi-employer pension plans, most of these principles are relevant to pension plans in general.

SCOPE

The role of the Superintendent is to administer the pension legislation in a manner consistent with the intent of the statute, balancing the security of the benefits promised with the limitations of plan sponsors or participating employers.

Our work is based on the *Pension Benefits Standards Act* (“PBSA”) and the Pension Benefits Standards Regulation (“PBSR”), guidelines issued by the Canadian Association of Pension Supervisory Authorities ("CAPSA”) and the International Organisation of Pension Supervisors, and industry best practices.

As a CAPSA member, BCFSA encourages administrators to follow CAPSA's Guideline No. 4: Pension Plan Governance Guideline and Self-Assessment Questionnaire as they provide a broad outline of good governance principles and assistance on establishing and maintaining best governance practices.

BCFSA has the permission of the Financial Services Regulatory Authority of Ontario (“FSRA”), to include references to FSRA’s Defined Benefit Multi-Employer Pension Plans – Leading Practices in this Guideline.

BACKGROUND INFORMATION

As of December 31, 2021, approximately 1.02 million British Columbians participate in multi-employer pension plans (“MEPPs”) registered in B.C. The majority of B.C. registered MEPPs provide members with a defined benefit (“DB”) provision, with others providing a target benefit (“TB”) provision or a defined contribution (“DC”) provision.

Distribution (Assets and Membership) of MEPPs[1] in B.C. as at December 31, 2021

DB	TB	DC
• $163.2 billion • 756,000 members	• $12.6 billion • 253,000 members	• $0.8 billion • 12,000 members

DEFINITIONS

1.1 Multi-Employer Plan

Section 1(1) of PBSA defines a multi-employer plan as a pension plan administered for employees of two or more participating employers that are not affiliates within the meaning of the Business Corporations Act. PBSA and PBSR also define the different types of multi-employer plans:

- "**collectively bargained multi-employer plan**" means a multi-employer plan established through a collective agreement;

[1] For plans offering more than one benefit provision, the assets and membership data were grouped by benefit provisions. The data also includes members employed outside of B.C.

- **“non-collectively bargained multi-employer plan**" means a multi-employer plan established other than through a collective agreement;
- "**divisional multi-employer plan**" means:
  - a) a non-collectively bargained multi-employer plan, or
  - b) a collectively bargained multi-employer plan, other than a collectively bargained multi-employer plan that is a specified multi-employer plan within the meaning of Section 147.1 of the *Income Tax Act* (Canada); and
- **"jointly sponsored plan"** means a pension plan:
  - a) that meets the prescribed criteria,
  - b) of which the plan text document contains a benefit formula provision,
  - c) in which the participating employers and active members are required to make contributions, including, without limitation, contributions to meet the funding requirements applicable to the plan, and
  - d) in which responsibility for the governance of the plan is shared among
    - (i) the participating employers,
    - (ii) the active members of the plan, and
    - (iii) the other classes of members, if any, that are authorized under the plan documents to share in that responsibility.

1.2 Pension Plan Administrator

Every pension plan should have a governing body vested with the power to administer the plan, and ultimately responsible for protecting the interest of plan members and beneficiaries. The pension plan administrator is the body responsible for the overall governance of the pension plan.

The administrator of a multi-employer pension plan or a jointly sponsored plan is often a board of trustees, or other similar body acceptable to the Superintendent that is established under the supporting plan documents to administer the plan as per Section 27 and Section 5(a) of PBSR.

If the plan is a non-collectively bargained multi-employer plan other than a jointly sponsored plan, the participation agreement could identify a participating employer as the administrator of the plan.

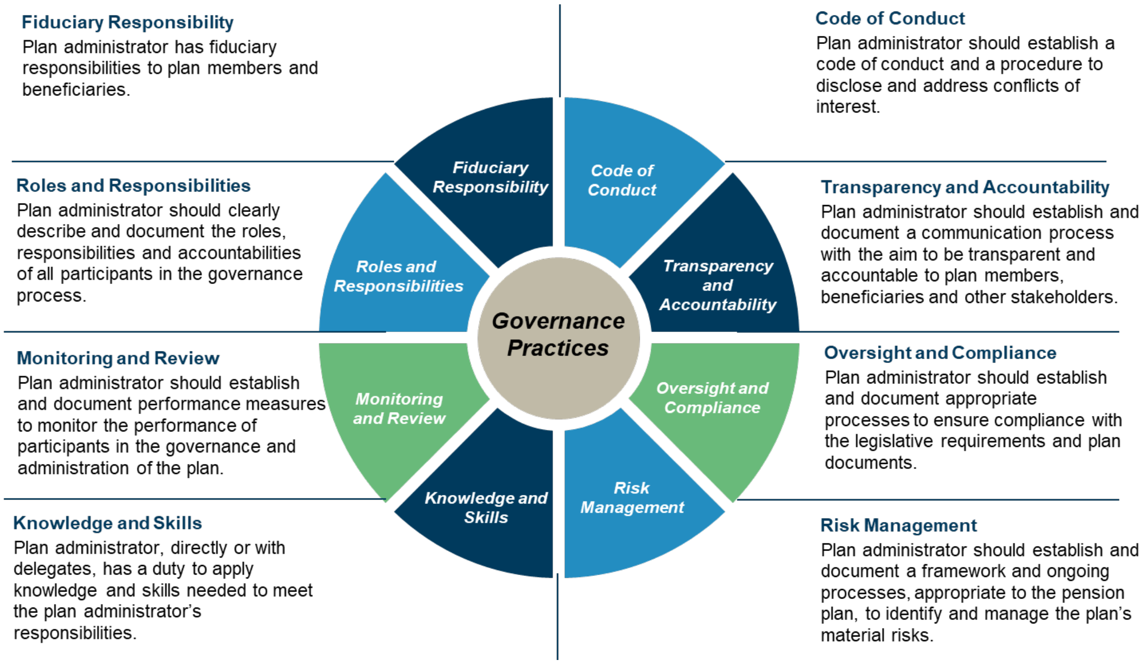
For the purpose of this document, plan administrator and board of trustees (“board”) are used interchangeably.

GOVERNANCE FRAMEWORK

Pension plan governance refers to the **structure and processes in place for the effective administration of the pension plan** to ensure the fiduciary and other responsibilities of the plan administrator are met.

Good pension plan governance:

- Promotes timely and cost-effective delivery of benefits;
- Promotes consistent administration in the best interests of plan beneficiaries;
- Promotes greater accountability and enhances protection against regulatory and fiduciary breaches; and
- Requires appropriate control mechanisms that encourage good decision making, proper and timely execution, and regular review and assessment.



2.1 Governance Policy

The administrator of a pension plan registered with BCFSA must ensure that a written governance policy is established pursuant to Section 42 of PBSA and Section 50 of PBSR. Specifically, the governance policy does the following:

a) Sets out the structures and processes for overseeing, managing and administering the plan;

b) Explains what those structures and processes are intended to achieve;

c) Identifies all participants who have authority to make decisions in respect of those structures and processes, and describes the roles, responsibilities and accountabilities of those participants;

d) Sets performance measures and establishes a process for monitoring, against those performance measures, the performance of each of the participants identified in paragraph (c);

e) Establishes procedures to ensure that the administrator and, as necessary, any other participants in those structures and processes have access to relevant, timely and accurate information;

f) Establishes a code of conduct for the administrator and a procedure to disclose and address conflicts of interest of the administrator;

g) Establishes an ongoing process to identify the educational requirements and skills necessary for the administrator to perform the administrator's duties in relation to the plan;

h) Identifies the material risks that apply to the plan and establishes internal controls to manage those risks; and

i) Establishes a process for resolving disputes involving members or other persons who are entitled to benefits under the plan.

Further, Section 41(1)(b) of PBSA requires the plan administrator to assess the administration of the plan including the plan's governance.

As part of BCFSA's supervisory framework, we review the governance policy of selected pension plans. In our reviews, we have noted the following common areas where existing governance policies can be improved:

- **The governance policy may be outdated or inadequate.** Examples include:
    - A lack of a succession plan in place to ensure continuity of the board of trustees and good plan administration;
    - A lack of adequate controls, oversight procedures, and documentation processes for the delegation and selection of third-party service providers;
    - Inadequate documented processes to objectively evaluate the performance of service providers and to ensure service providers are meeting their contractual obligations;
    - A failure to adequately identify and describe the material risks (both current and emerging risks) relating to the unique characteristics of the plan and the internal controls to address those risks; and
    - A lack of a formal procedure and documentation to self-assess the board of trustees' performance and skills that connect to educational support.
- **The governance policy is not being followed.**
    - The plan may have comprehensive controls and oversight procedures in place; however, the procedures are not being followed.

Over time, the initial governance policy that was established could become less reflective of best practices. Further, the governance policy in place may become outdated as changes to the organizational and board structure are made, or new pension risks emerge.

BCFSA's Expectation: The governance policy should be reviewed regularly to ensure that the policy is being followed and that the plan is administered in accordance with it. Medium to large multi-employer pension plans should have a standing schedule of three to four formal board meetings per year to allow for timely and proactive decision making for the plan.

2.2 Fiduciary Responsibility

Fiduciary duty arises when one party has a certain vulnerability in respect to another party.

In a pension plan, the plan administrator stands in a fiduciary capacity in relation to plan members and others entitled to benefits and has a fiduciary duty around issues such as making decisions (regarding changes to plan design and/or investment), complying with pension legislations, and communicating plan information.

The fiduciary duties listed below do not represent an exhaustive list of the conduct required from the boards of trustees. Part 6 of PBSA [Administration of Pension Plans] fully outlines the responsibilities of a plan administrator. Further, Section 41(1)(e) of PBSA requires the plan administrator to assess the performance of the trustees.

Duty to Comply With the Trust's Terms

Each trustee member of the board should be familiar and comply with the plan's governing documentation (such as plan text, policies, trust and service agreements) as well as the applicable legislations.

Duty to Be Loyal

The duty of loyalty is the cornerstone of the fiduciary relationship. Each trustee member of the board should avoid personal benefit or any conflict of interest, and must act honestly and in the best interests of the plan beneficiaries.

Duty of Care

The boards of trustees are responsible for investing plan assets and making plan related decisions with care, diligence, and skill, and in the best interest of plan beneficiaries.

Duty to Act in Good Faith

The boards of trustees are expected to apply an even-handed treatment of various classes of plan beneficiaries, as it relates to benefit adjustments, restructuring or allocation of surplus including, restoration of previously reduced benefits or providing additional benefits.

Duty to Act Personally

Trustee members of the board are not expected to handle all responsibilities on their own or to be completely knowledgeable. The Board is responsible to ensure that all delegates have the relevant qualifications, resources and experience to carry out their function.

Duty to Disclose

The board has the responsibility to disclose relevant and accurate information to the Plan stakeholders (such as plan beneficiaries, participating employer, board members etc.), in a timely manner.

2.3 Roles and Responsibilities

The operation and administration of multi-employer plans generally require collaboration from multiple stakeholders.

Section 50(c) of PBSR requires that the governance policy identify all participants who have authority to make decisions in respect of the structures and processes for overseeing and managing a plan, and describes the roles, responsibilities, and accountabilities of those participants.

Use of delegates:

- The plan administrators may use delegates to help carry out governance responsibilities. Delegates may include employees of the plan administrator and/or third-party service providers.
- The plan administrators and their advisors must be familiar with and comply with any applicable fiduciary duties, legal, and regulatory requirements.
- The plan administrators should establish contracts for all material functions performed by third parties and ensure that policies and procedures for the oversight of outsourcing arrangements are well documented.

- BCFSA's Outsourcing Guideline outlines the Superintendent's expectation on how plan administrators manage outsourcing arrangements.

Ultimately, the plan administrator is responsible for all outsourced activities and is expected to support its monitoring, control, and management of outsourcing risks through a sound governance structure**.**

BCFSA's Expectation: Regular and on-going dialogue is important among the trustees, their advisors, and key stakeholders to support awareness, collaboration, and operational effectiveness of the plan. Further, key administrative policies and procedures are expected to be well documented, e.g., member enrollment, record keeping, contribution remittance, benefit payments, review of third-party service providers and communication/ engagement with plan beneficiaries.

2.4 Monitoring and Review

Plan administrators must identify the roles, responsibilities, and accountabilities of all participants in the governance process. Section 50(d) of PBSR requires that the governance policy set performance measures and establishes a process for monitoring the performance of all identified individuals and parties.

Further, Section 41(1)(f) of PBSA requires the plan administrator to assess the performance of the administrative staff and any agents of the administrator.

The plan administrator is responsible for:

- Establishing and documenting appropriate performance measures;
- Regularly monitoring the performance of all participants in the governance process, including the plan administrator, internal staff and delegates;
- Regularly reviewing the appropriateness of such performance measures; and
- Establishing procedures and taking follow-up actions to correct inadequate performance.

BCFSA's Expectation: Performance evaluations need to be based on objective and impartial assessments. It is imperative that there are adequate controls and oversight procedures to ensure service providers are meeting their contractual obligations. The review should also be formally documented.

2.5 Knowledge and Skills

Section 50(g) of PBSR requires that the governance policy establish an ongoing process to identify the educational requirements and skills necessary for the administrator to perform its duties in relation to the plan.

Trustees could come from a wide range of backgrounds and experiences. The recruitment process of new trustees could vary between plans and some plans may be unable to fund education programs to the same extent as others. However, the plan administrator, directly or with delegates, has a duty to apply knowledge and skills needed to meet the plan administrator's responsibilities.

Establishing a continuous training and education policy will equip the plan administrator with the necessary skills and knowledge to oversee all the administrative functions of a pension plan, and to monitor those delegates and advisors to whom such functions have been delegated. Such policy could include, but is not limited to:

- A regular assessment of the needed skills for effective administration of the plan;
- A list of relevant pension courses and subscriptions with qualified institutions;
- In-house, plan-specific education sessions. These are often conducted by third party service providers (actuary, counsel, investment managers, etc.) regularly present at trustee meetings;
- A process for trustees to share knowledge gained from education programs with the board; and

- The frequency of education requirements, i.e., annual, every two years etc.

Additionally, BCFSA encourages that a trustee succession plan be in place to ensure continuity on the board of trustees and to build a consistent knowledge base and shared competency in pension plan management. A succession plan could include, without limitation:

- A process to efficiently identify and recruit new trustees;
- Any term limits or retirements that might result in a change in the board composition; and
- The appointment/election/removal procedures of a trustee.

The trustees are expected to make the best decisions possible using relevant knowledge and information available to them. It is important that the process used to reach the decision is prudent.

> **BCFSA's Expectation:** It is essential that the trustees collectively have sufficient knowledge and experience to be able to understand the decisions of the professionals that provide advice to the pension plan. Establishing a **training and education policy** and a **trustees succession policy** will ensure that the plan administrator has the knowledge and skills needed to meet the administrator's responsibilities.

2.6 Oversight and Compliance

Plan administrators should establish and document appropriate processes to ensure compliance with the legislative requirements and plan documents. Advisors must additionally adhere to any applicable professional obligations.

To promote industry best practice and to support plan administrators and service providers regarding the required fillings with BCFSA, please refer to our webpage that outlines the Filing Requirements for Pension Plans and the respective timelines. For more information, please refer to our Advisory.

Further, as per Section 41(1) of PBSA, all pension plan administrators are required to assess the administration of the plan at least triennially. This should include assessment of the:

a) Plan's compliance with the PBSA and PBSR;

b) Plan's governance;

c) Funding of the plan;

d) Investment of the pension fund;

e) Performance of the trustees, if any; and

f) Performance of the administrative staff and any agents of the administrator.

> **BCFSA's Expectation:** The assessment process is a part of good governance. The purpose of the self-assessment is to provide plan administrators adequate information to effectively assess the administration of their plans. It is essential that the plan administrator provide **demonstrated evidence** to document the plan's activities and oversight processes in support of the plan's review of each component.

2.7 Code of Conduct

Section 50(f) of PBSR requires that the governance policy establish a code of conduct for the administrator and a procedure to disclose and address conflicts of interest of the administrator.

As referenced in the CAPSA Guideline No. 4, the plan administrator should establish and periodically review a documented code of conduct applicable to the administration of the plan.

The code of conduct policy should set out expected behaviours, requiring trustee members of the board and delegates to observe high standards of integrity, honesty, and fair dealing regarding the administration of the pension plan.

It should also include procedures to identify, monitor and address material conflicts of interest, both actual and perceived, as well as processes to appropriately disclose conflicts and breaches of the code of conduct to the board.

RISK MANAGEMENT PRACTICES

Good risk management is a key characteristic of a well-run pension plan and an important part of the plan administrator's role in protecting plan members' benefits.

Section 50(h) of PBSR specifically requires that the governance policy identify the material risks that apply to the plan and establish internal controls to manage those risks. Plans with benefit formula provisions are also required to perform stress testing or sensitivity analysis on material risks identified in an actuarial valuation report. Specifically,

- Section 60 of PBSR provides that plans with a target benefit provision must identify key factors that pose a material risk **to the plan's ability to meet the funding requirements; and**
- Subsections 3260.10 to 3260.12 of the CIA Standards of Practice more generally require the actuary to consider the plan's plausible adverse scenarios in the valuation report.

The design of each plan's risk management structures and practices will vary based on the plan's characteristics (such as plan types, demographic etc.) and circumstances, and the risks being assumed.

A risk management framework will generally include the following five steps.

Overall, the risk management framework should provide the board of trustees clarity as to their ability to withstand identified risks and develop a plan to either mitigate, accept, or respond to these risks. The plan administrator is also responsible for ensuring that the plan has a rigorous, process-oriented decision-making framework for risk management practices.

Available resources:

- BCFSA's PfAD for Pension Plans with a Target Benefit Provision Guideline which informs the development of the provision for adverse deviation in the context of the plan's risk management framework for pension plans with a target benefit provision.

- BCFSA's Information Security Guideline which outlines some high-level, principles-based expectations for the management of information security risks which are becoming increasingly prevalent.

- BCFSA's Outsourcing Guideline which outlines the Superintendent's expectation on plan administrators' management of outsourcing risks.

- CAPSA's upcoming ***Risk Management Guideline*** to support plan administrators in fulfilling their fiduciary duties and appropriately consider their legislated standard of care. The guideline is intended for all plan administrators of different plan types and will assist plan administrators to create a risk management framework to identify, evaluate, manage, and monitor material risks. The guideline will cover specific topics such as:
    - Third-party (outsourcing) risk;

- Cyber security;
- Environmental, social, governance issues;
- Use of leverage;
- Risk management of target pension arrangements; and
- Investment risk governance.

BCFSA's Expectation: Pension risks continue to emerge. Plan administrators should regularly review material risks identified in the plan's policies and document any actions or events that either change the status of a risk or present new risks. Plan administrators should consider incorporating the stress test results as part of an appropriate risk management strategy for the plan.
Risk management should be an ongoing process.

COMMUNICATION PRACTICES

Clear communication, disclosure, and transparency are fundamental to the successful functioning of a pension plan.

Section 50(e) of PBSR requires that the governance policy establishes procedures to ensure that the administrator and other key stakeholders have access to timely, accurate, and relevant information. Key plan stakeholders in multi-employer pension plans include trustee members of the board, participating employers, and service providers. Plan administrators are responsible for maintaining regular communication with plan stakeholders and keeping them informed of significant plan events and decisions.

Further, as per Section 36 of PBSA, plan administrators of non-collectively bargained multi-employer pension plans must:

a) Enter into a written participation agreement with the participating employers in the plan, and the agreement must:
   (i) meet the prescribed criteria as outlined in Section 28 of PBSR, 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.

The board could consider adopting similar strategies listed above when communicating with participating employers. **It is essential that participating employers understand their obligations under the plan as per the participation agreement they signed.**

BCFSA's Expectation: The governance policy must include procedures to ensure that the plan administrator and, as necessary, any participants involved in the structures and processes for overseeing, managing, and administering the plan, have access to relevant, timely, and accurate information.

Member communication

It is the plan administrator's responsibility to ensure that members receive the prescribed information as per legislative requirements and are aware of all relevant plan decisions and the impacts that they may have on the members' rights and benefits. It is also critical that pension plan members understand the rights and responsibilities they have in relation to their specific plan type (either benefit formula or defined contribution).

PBSR Section 50(i) requires that the governance policy establish a dispute resolution mechanism for members and plan beneficiaries. This mechanism may include the right to appeal certain administrative staff decisions to the board of trustees or to a committee established by the board.

Plan administrators should consider the following member communication strategies:

- Ensure plan communication materials are in plain language with minimal use of jargon;
- Ensure members' records are up to date to reduce the possibility of administrators not being able to locate a member or their beneficiaries when they become eligible to receive their entitled benefits;
- Engage members through various forms of communication, including member presentations, educational sessions, newsletter, website portals, retirement planning tools, and access to financial planners, if applicable; and
- Identify the key audience for each piece of communication and tailor the information to that audience (e.g., offer targeted member education sessions for members close to retirement age).

Communication is particularly important in pension plans with a target benefit provision. Because of their ability to reduce benefits, enhanced disclosure to members about their plan become paramount. Administrators must provide members with enough information to understand their benefit entitlements, including the risk that accrued benefits may be reduced.

Overall, it is imperative that plan administrators provide their members with effective communication and education as members tend to be confused or unaware of the complexity of a plan's provisions which can easily affect future financial decisions and security in retirement.

BCFSA's Expectation: Clear communication, disclosure, and transparency are fundamental to the successful functioning of a pension plan**.** Plan administrators are encouraged to develop and implement a **communication policy**, which clearly identifies the key audiences (members, participating employers and other plan stakeholders), and sets the goals and objectives.
Plan administrators should regularly review their communication plan for clarity and consider conducting feedback sessions to gauge the effectiveness of their communication plans.

Available resources:

- BCFSA's advisory on Disclosure Requirements for All Plans Registered in B.C. provides information on the disclosure requirements that plan administrators must provide to plan members and beneficiaries; and
- For defined contribution plan administrators:
    - BCFSA's panel discussion on Effective Member Communication and Education Strategy at the 2022 Pensions Forum, and
    - CAPSA's Member Guide for defined contribution pension plans.

APPENDIX

References

Pension Benefits Standards Act

Pension Benefits Standards Regulation

BC Financial Services Authority (BCFSA)

- Pension Resources
- BCFSA - Annual Pension Reporting System (E-filing)
    - Annual Pension Report User Guide
- Report on Pension Plans Registered in British Columbia (October 2022)
- Pension Plan Governance and Assessment (March 2017)
- BCFSA Pension Regulatory Information
    - Filing Requirements and Deadlines for Pension Plans
    - Registration of Amendments as Required Under the PBSA
    - Disclosure Requirements for All Plans Registered in B.C.

- BCFSA Guidelines:
    - PfAD for Pension Plans with a Target Benefit Provision
    - Information Security Guideline
    - Outsourcing Guideline
- BCFSA 2022 Pensions Forum on Defined Contribution Plans: Improving Retirement Outcomes for British Columbians
    - News Release
    - Program Guide and Speaker Bios
    - Highlights from BCFSA
    - Panel Discussion 1: Effective Investment Strategy for DC Plans
    - Panel Discussion 2: Decumulation Options – Plan Design Considerations
    - Panel Discussion 3: Effective Member Communication and Education Strategy

Canadian Association of Pension Supervisory Authorities

- Guidelines for Industry
    - Guideline No. 4: Pension Plan Governance Guideline
    - Guideline No. 4: Pension Plan Administrator Governance Self-Assessment Questionnaire
- Guidance for Pension Plan Members

Financial Services Regulatory Authority of Ontario

- Defined Benefit Multi-Employer Pension Plans – Leading Practices

Office of the Superintendent of Financial Institutions

- Governance (Defined Benefit Plans)

Canadian Institute of Actuaries (CIA)

OECD Guidelines for Pension Fund Governance