HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

RESPONSE TO PETITION

Prepare in English and French marking 'Original Text' or 'Translation'

PETITION NO.: **421-01981**

BY: **MS. BOUTIN-SWEET (HOCHELAGA)**

DATE: **DECEMBER 13, 2017**

PRINT NAME OF SIGNATORY: **SIGNED BY THE HONOURABLE NAVDEEP BAINS**

Response by the Minister of Innovation, Science and Economic Development

SIGNATURE
Minister or Parliamentary Secretary

SUBJECT

PENSION SYSTEM

ORIGINAL TEXT

REPLY

The Government of Canada would like to thank the petitioners for sharing their views on measures to strengthen protections for pensions and employee benefits. The Government welcomes input on these important issues.

- The Government of Canada is always concerned about the impacts of employer insolvency on employees, their families, their communities, and other stakeholders.
- Canada's insolvency laws (such as the *Bankruptcy and Insolvency Act* (BIA) and t*he Companies' Creditors Arrangement Act* (CCAA) aim to strike the proper balance between the competing interests of debtors and creditors when a company in financial difficulty restructures.
- Both federal and provincial pension laws provide similar frameworks to regulate pension funding, and require pension fund assets to be held in trust, for the sole benefit of pensioners and completely protected from the claims of other creditors.
- The CCAA process gives firms in financial distress the opportunity to restructure which often allows them to re-emerge as a financially viable business, saving jobs, pensions and economic value.

- The CCAA process has led to successful restructurings as well as orderly liquidations that have resulted in significant recoveries for employees, pensioners and creditors – helping make impossible situations easier to bear.

Federal-Provincial Pension Regulation

The Government understands the importance of secure and sustainable pension plans. For this reason, both federal and provincial pension laws contain similar measures to protect pensioners and regulate the funding of future pension obligations. Private pension plans are regulated under the *Income Tax Act* and the applicable pension standards legislation, which can be either federal or provincial, depending on the employer's business operations. Plans sponsored by employers in federally regulated industries, which include banking, inter-provincial transportation and telecommunications, are regulated under the federal *Pension Benefits Standards Act, 1985*. Other industries, such as retailing and manufacturing are typically regulated by the province in which the establishment and employees are located.

Federal and provincial pension legislation both require that pension fund assets be held in trust for the sole benefit of pensioners. Also, pension plan sponsors must comply with pension funding regulations and make periodic contribution payments based on actuarial assessments to the pension trust fund. If it is determined that a pension plan sponsor has unfunded pension liabilities (where there is a deficit between a pension plan's current assets and its future obligations to pensioners), pension plan regulators may order the plan sponsor to make special payments to reduce the unfunded liability over time, in order to improve the sustainability of the plan.

Although different legislation exists at the federal and provincial levels, the funding requirements are largely similar across jurisdictions. Defined benefit pension plans are required to prepare actuarial valuations to determine the plan's liabilities, which in turn determine the required contribution levels. Should the value of a plan's liabilities exceed that of its assets, employers are required to remit to the plan additional funds to return the plan to fully funded status.

Pension Claims in Insolvency

Federal insolvency legislation such as the BIA and the CCAA are important marketplace framework laws that enhance the ability of Canadian businesses to access credit, invest and create jobs for Canadians, while ensuring that creditors and other stakeholders, including employees and pensioners are treated equitably. One of the objectives of the BIA is to facilitate the equitable and efficient distribution of assets of an insolvent business among creditors. The objective of the CCAA is to give a firm in financial trouble the time and opportunity to negotiate a restructuring agreement with its creditors while still allowing them to operate and service their customers. Successful restructurings help to mitigate the impact of insolvency by allowing a company to remain in business, employ Canadians, and fund pensions. Where the CCAA process does not end in a viable restructuring plan, it may also facilitate an orderly resolution of the company's obligations with the goal of maximizing value and recovery for all creditors, including workers and pensioners.

Both the BIA and the CCAA contain provisions to protect pension claims and pensioners. The BIA has a limited "super-priority" that provides for the payment of outstanding regular pension contributions ahead of secured creditors. The CCAA provides similar protections for corporate restructurings. Unfunded pension liabilities are treated as unsecured claims and are paid on par with the claims of other unsecured creditors. Canada's protection of pension claims in insolvency legislation is consistent with or exceeds the best practices of most Organisation of Economic Co-operation and Development (OECD) Countries. No other OECD country provides unfunded pension liabilities with a super-priority over other creditor claims in insolvency. Canada's insolvency laws strive to strike the right balance between protecting employees and pensioners, while ensuring businesses can access credit on reasonable terms, which provides a platform for growth and good middle class jobs.

<u>Post-Employment Benefits</u>

The Government also understands the importance of secure post-employment medical, life insurance and other benefits. Post-employment benefits are provided under private agreements between employers and employees and take many different forms. They are intended to supplement basic protections offered by federal and provincial government social programs. Post-employment benefits are generally regulated by the jurisdiction mandated to regulate the employment relationship, and the extent of such regulation varies among federal and provincial jurisdictions and depends on the specific type of benefits offered. Funding of post-employment benefits also varies and depends on the terms of the agreement between the employer and the retired employees. Post-employment benefits can be insured, self-funded on a pay-as-you-go basis by the employer, or pre-funded through a trust fund paid for by employer and employee contributions. As post-employment benefits are usually a contractual obligation between the employer and employee, they are legally enforceable in accordance with their terms.

Canada's insolvency laws include safeguards to enhance the transparency and fairness of the insolvency process. The CCAA allows for interested parties and stakeholders, including pensioners, to have the opportunity to make representations before the CCAA court. Moreover, CCAA courts may provide employees and retirees with legal representation at company expense to protect their interests. CCAA courts may also approve hardship funds to assist retirees or workers that are facing hardship due to employer insolvency proceedings. Post-employment benefits may continue to be paid to beneficiaries if they are insured against the sponsoring employer's insolvency or sufficiently pre-funded through a trust. In a CCAA proceeding, the court may determine that the suspension or termination of the employer's post-employment benefits is necessary for a successful restructuring that will maximize the recovery for all of the employer company's stakeholders, including pensioners and employees.

The Government will continue to monitor Canada's pension regime to ensure that it continue to work for Canadians. The Government also constantly reviews Canada's marketplace framework laws, including insolvency and corporate laws, to ensure that they remain modern and up-to-date with ongoing marketplace changes and the needs of Canadians.