

Newsletter Express

Supplemental Pension Plans

18 March 2009

Measures to reduce the effects of the financial crisis

On 15 January 2009, the Québec National Assembly adopted legislative measures to reduce the effects of the financial crisis on pension plans. This issue of *Newsletter Express* contains information on these measures, which apply to pension plans subject to the *Supplemental Pension Plans Act*.

These measures are designed, on the one hand, to ease the financial burden of companies that have a defined benefit pension plan and, on the other hand, to offer new options for paying the benefits of certain plan members and beneficiaries where such benefits are reduced because of the insolvency or bankruptcy of the employer.

Some of these measures are described in the [*Act to amend the Supplemental Pension Plans Act and other legislative provisions in order to reduce the effects of the financial crisis on plans covered by the Act*](#) (Bill 1), which was adopted on 15 January 2009. Other measures will be added in a regulation whose draft is expected to be published (“prepublication”) in the spring of 2009. This was announced in a document tabled in the National Assembly by the Minister of Employment and Social Solidarity, Mr. Sam Hamad.

Furthermore, Bill 1 amends the *Supplemental Pension Plans Act* to provide that a regulation to exempt a plan or a class of plans from the application of certain provisions of the *Act* may have retroactive effect. It cannot, however, have effect as from a date prior to 31 December of the year that precedes publication of the draft regulation. Thus, the relief measures to be provided for in the regulation can have effect as from 31 December 2008, if prepublication of the regulation occurs in 2009.

Funding measures

The plan funding measures apply to a plan's solvency valuation. They therefore have fewer effects for plans exempted from funding a solvency deficit, including those whose employer is a municipality or a university.

In a plan that has workers in more than one province, the funding rules that apply to the entire plan are those of the major authority, that is, the province having the most active members. Therefore, the relief measure will apply only where the major authority is Québec.

Most of the measures are temporary. They cannot be used for an actuarial valuation after 31 December 2011.

Bill 1 provides only one funding measure, which refers to the standards of the Canadian Institute of Actuaries (CIA). Additional measures will be provided by regulation. The regulation will also contain other rules that cover, for example, the calculation of the minimum contribution and the use of actuarial gains to reduce deficits rather than to constitute a provision for adverse deviation (PFAD) during the period in which relief measures apply.

Immediate adoption of the new standards of the Canadian Institute of Actuaries

On 8 December 2008, the CIA revised its standards of practice for calculating pension commuted values and set their effective date at 1 April 2009. Generally, the revised standards have the effect of reducing the value of a plan's commitments by about 3%. Bill 1 provides the possibility of applying the new rules before that date, more specifically, to valuations whose date is after 30 December 2008.

The application of the new standards must not be automatic. For an actuarial valuation during the period after 30 December 2008 and before 1 April 2009, the valuation will be made by taking into account the revised standards only where the employer sends the pension committee written instructions to that effect. Where several employers are parties to a plan, all the employers must give such instructions.

Note that this measure applies only to valuation of the plan. For valuation of a pension's commuted value, for example, when a member wishes to transfer his or her benefits, Bill 1 amends the *Regulation respecting supplemental pension plans* to provide that the revised CIA standards will be applied as of 1 April 2009. Applying the standards before that date will not be allowed.

Consolidation of unfunded liabilities

According to the document tabled in the National Assembly, the government proposes to provide by regulation the possibility of consolidating in a single unfunded liability all the outstanding unfunded liabilities and the new solvency technical actuarial deficiency created at the time of the **first** actuarial valuation after 30 December 2008. This is a temporary measure that can be used only once.

Extension of the amortization period

The government also proposes to provide by regulation that the amortization period for the consolidated unfunded liability (see preceding paragraph) will be 10 years rather than five.

Assets smoothing

Furthermore, the government proposes to provide by regulation that the valuation of a plan's assets for the purpose of determining its solvency can be temporarily made using assets smoothing. Note that actuarial standards already allow smoothing for the valuation of a plan's funding.

Smoothing consists in valuating the assets by spreading the fluctuations in the value of assets over a certain period. The resulting value is therefore an adjusted value rather than the liquidation value as at the valuation date. The effect of smoothing is to carry forward to future years a portion of the gains or losses attributable to market volatility.

The government proposes to provide by regulation that smoothing will be limited to a maximum period of 5 years.

Eligibility for financial relief measures

The government intends to set by regulation certain conditions to be met in order to use relief measures.

Amortization payments cannot be less after application of the relief measures provided by regulation¹ than they would have been in the absence of the financial crisis. By this restriction, the government will ensure that the plan funding relief granted to employers will not go beyond the objective of Bill 1, whose intention is that losses related to the financial crisis will not unduly increase employers' financial burdens.

The protection of member benefits remains important. Thus, the **new plan funding rules**, which will come into force on 1 January 2010, **will have to be applied** as soon as any relief measure provided by regulation² is used with respect to plan funding. Specifically, pension committees will have to produce an annual actuarial valuation and where a plan's degree of solvency is less than 90%,³ the cost of any improvement will have to be paid in full as at the day following the valuation date.

Measure affecting certain members and beneficiaries

This measure affects those members and beneficiaries whose benefits are reduced upon termination of their plan or by the withdrawal of an employer from their plan. It gives them one or more additional options, which may be advantageous. It applies to plan members who work in Québec and to their beneficiaries, even if the plan is under the supervision of another province.

The measure is temporary and does not cover all plans. More specifically:

- the date of termination or withdrawal must be after 30 December 2008 and before 1 January 2012;
- the plan must be terminated because of the employer's bankruptcy or an employer withdraws from a multi-employer plan because of its bankruptcy or insolvency;
- as at the date of termination or withdrawal, the plan's assets are insufficient to fully pay all the benefits.

The measure does not apply to all the members and beneficiaries affected by the termination or withdrawal. It applies, on the one hand, to those who were receiving a pension on the date of termination or withdrawal and, on the other hand, to those who would have been entitled to a pension on that date if they had filed an applica-

1. The measures with respect to deficit consolidation, extension of the amortization period and assets smoothing.

2. *Idem*.

3. Or a certain portion of the cost will have to be paid as at that time, if the improvement had the effect of reducing the degree of solvency to less than 90%.

tion. In the latter case, those affected are, for the most part, members who are at least 55 years old.

Additional options

According to the usual rules, the members and beneficiaries who were not receiving a pension on the date of termination have to transfer the value of their benefits to an authorized⁴ transfer instrument of their choice. In the case of an employer's withdrawal, they will be able (but not required) to have their benefits transferred. Temporarily, if the plan meets the conditions described above, **those who would have been entitled to a pension** if they had filed an application and **whose benefits are reduced** will also have the option of receiving a pension. The pension will be administered by the Régie des rentes du Québec.

Generally, when a plan is terminated, the pensions of pensioners must be guaranteed by an insurer and may be guaranteed upon their request if their employer withdraws from their plan. Temporarily, if the plan meets the conditions described above, a **pensioner whose pension is reduced** will also have the option of transferring the commuted value of the pension to a life income fund (LIF) or requesting that the pension be administered by the Régie des rentes du Québec.

Note that where the plan's assets are insufficient, **the usual rules with respect to the reduction of benefits will continue to apply at this point**. Thus, the pension paid by the Régie will be a reduced pension, and the sum transferred to an LIF will also take the reduction into account.

Administration by the Régie

When a member or beneficiary opts to receive a pension administered by the Régie, he or she remains a member or beneficiary of the pension plan. The assets corresponding to his or her pension remain in the plan's pension fund and the Régie becomes the administrator of those assets, with the same powers and duties that a pension committee has.

Thus, in the event of termination, following payment of the benefits of the other members and beneficiaries, the Régie alone administers the plan. In the case of an employer's withdrawal, the Régie becomes the administrator for a portion of the assets

4. Most often, the transfer is made to a locked-in retirement account (LIRA) or to a life income fund (LIF).

and pensioners, while the plan's pension committee remains the administrator of the remainder of the assets and the other members and beneficiaries.

Despite all contrary provisions of the plan text, the expenses related to the Régie's administration will generally be borne by the portion of the pension fund that is under the Régie's administration.

Note that the Administrative Tribunal of Québec does not have jurisdiction to receive appeals against decisions made by the Régie in its capacity as administrator. In such a case, recourse is the same as that with respect to decisions made by a pension committee, and includes recourse to the civil courts.

Advantages of administration by the Régie

While acting as a prudent manager, the Régie will try to improve benefits. It can amend the plan to increase amounts paid to the retirees and beneficiaries whose assets are under its administration, particularly if surplus assets are produced.

If the assets under the Régie's administration become insufficient to pay the reduced pensions that follow a plan's termination or the withdrawal of an employer, or to pay the administration costs, the shortfall will be paid into the pension fund out of Québec's Consolidated Revenue Fund.

Moreover, the *Supplemental Pension Plans Act* provides that the benefits of members and beneficiaries that are under the Régie's administration cannot be further reduced as a result of the application of the temporary funding measures provided for by regulation.⁵ Since the funding measures have the effect of reducing the amortization amounts to be paid by the employer, they reduce to the same extent the sums available in the pension fund if the plan is terminated or an employer withdraws. Such a shortfall, if any, will also be paid into the fund out of Québec's Consolidated Revenue Fund.

Thus, the government guarantees the reduced pension during the Régie's administration and also assumes any consequences arising from the application of the temporary funding measures.

⁵ The measures with respect to deficit consolidation, extension of the amortization period and assets smoothing.

End of administration by the Régie

The Régie's administration is temporary. At the end of its administration, it must use all the assets to guarantee the pensions with an insurer.

The Régie's administration must end no later than the end of the fifth fiscal year that follows the year in which its administration began. The Régie can also decide to end its administration earlier, particularly if the assets become sufficient to obtain a guarantee from an insurer for the entire pension to which a member or beneficiary would have been entitled on the plan's termination or withdrawal date if the funds available at that time had been sufficient or, to put it another way, if the assets become sufficient to purchase unreduced life annuities.

Measures unrelated to the financial crisis

Bill 1 provides some measures that are not directly related to the financial crisis.

Summary of the actuarial valuation

The *Supplemental Pension Plans Act* has been amended to require that a summary be included with the actuarial valuation report submitted to the Régie. The summary will be given on a form provided by the Régie. By grouping the main valuation data in a uniform manner, the summary will facilitate the Régie's supervisory work, particularly the verification of actuarial valuations by professional analysts. A similar summary is already required for plans under the supervision of Ontario and the federal government.

This measure is part of the new, permanent funding rules.

Retroactive effect and exemption from “prepublication”

The *Regulation respecting supplemental pension plans* provides for the application of CIA standards. If those standards change and the Québec government deems the changes appropriate, the *Regulation* must be amended so that the new standards will apply. Moreover, the *Act* did not previously allow such a regulatory amendment to be retroactive.

Taken together, the usual procedure for amending the *Regulation* and the prohibition of retroactive effect means that it has been virtually impossible to amend the *Regulation* early enough for the new standards to apply as of the date recommended by the CIA.

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For that reason, the *Act* now provides that such a regulatory amendment may be made without publishing a draft regulation (“prepublication”) and that the amendment can have retroactive effect from a date that is not prior to the date of approval of the new standards by the CIA’s Actuarial Standards Board.

This provision applies only to an amendment to the *Regulation* that concerns the application of a CIA standard of practice. The usual rules procedures continue to apply for all other regulatory amendments.

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