RETRAITE QUÉBEC
Supplemental pension plans

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Newsletter

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Amendments to the *Supplemental Pension Plans Act* that came into force on 11 December 2020

This *Newsletter* provides information to pension plan administrators on the main amendments to the *Supplemental Pension Plans Act* regarding defined-benefit pension plans and defined-contribution plans.

The amendments came into force on 11 December 2020 following the passage of Bill 68, *Act mainly to allow the establishment of target benefit pension plans* (2020, chapter 30).

The *Newsletter* deals with the following:

- payment of defined benefits;
- actuarial valuations and actuarial information summary;
- additional payment option during the employer's insolvency;
- use of surplus assets during the plan's existence;
- internal by-laws;
- withdrawal of an employer;
- variable payment life pensions;
- special measures for the municipal and university sectors.

Information on target-benefit plans

Since 11 December 2020, date on which the *Act mainly to allow the establishment of target benefit pension plans* (2020, chapter 30) was assented to, target-benefit pension plans can be implemented in Québec.

The supervision of a target-benefit pension plan is provided for mainly in Chapter X.3 of the *Supplemental Pension Plans Act*. The provisions of the *Supplemental Pension Plans Act* (chapter R-15.1) apply to those plans, except where special rules are provided for in that Chapter. In case these rules are inconsistent with the *Supplemental Pension Plans Act*, the provisions of Chapter X.3 prevail.

Retraite Québec is planning to add information related to the implementation and operation of target-benefit pension plans on its website. As soon as the information becomes available, we will inform you via the Info Express SPP newsletter.

Payment of defined benefits

The degree of solvency used to pay the value of defined benefits of a member is the degree of solvency applicable at the date on which the value of the benefits is assessed[1].

Before amendments were made to the *Supplemental Pension Plans Act*, the degree of solvency used was the most recent, as determined in the actuarial valuation or on the notice on the financial position of the pension plan, and sent to Retraite Québec before the date on which the value of the benefits is assessed.

From now on, a plan can also provide that the degree of solvency is established at intervals shorter than the plan's fiscal year in accordance with the rules provided for by regulation[2]. The new option also applies to negotiated contribution multi-employer plans.

Legal references: sections 143 and 146.20 of the *Supplemental Pension Plans Act*

Actuarial valuations and actuarial information summary

Date on which an amendment to the plan is taken into account

The date on which an amendment having an impact on funding must be subject to an actuarial valuation no longer needs to coincide with the end of the fiscal year. From now on, an amendment must be valuated for the first time in an actuarial valuation the date of which is not later than the last of the following dates:

- the date on which the amendment was made;
- the effective date of the amendment.

However, an amendment that is to reduce the commitments of a plan must always, if it is made on services rendered before the effective date of the amendment, be considered for the first time on the date on which it becomes effective.

Actuarial valuation concerning an amendment

An additional time limit is granted in certain cases to send to Retraite Québec an actuarial valuation report concerning an amendment to the plan. The report can be sent to Retraite Québec not later than nine months after the date on which the amendment was made or nine months following the date of the actuarial valuation, whichever is later.

Example

On 1 November 2020, it was decided to make an amendment that would take effect on 1 March 2020. The amendment must be taken into account **not later than** in an actuarial valuation as at 1 November 2020.

The parties agreed to consider the amendment for the first time in a complete actuarial valuation of the plan as at 1 March 2020.

Before making the legislative amendment, the deadline to send the actuarial valuation report would have been nine months as of the valuation date, that is 1 December 2020.

However, considering that the amendment was made on 1 November 2020 and it would be difficult to comply with the usual deadline (1 December 2020) to send the actuarial valuation report dated 1 March 2020, an additional time limit is granted to send the report. The deadline is nine months as of the date on which the amendment was made; therefore until 1 August 2021.

1. It is the date used to calculate the value of the benefits, that is, most often, the date on which a person ended his or her active membership in a plan, the date of the transfer request for the value of the benefits or the date on which the person dies.

2. In April 2021, the regulatory provisions have not yet been made.

Actuarial valuation for the purchase of annuities

The deadline for sending Retraite Québec a report on an actuarial valuation for the purchase of annuities for the purpose of paying benefits has been extended from four to nine months.

For negotiated contribution multi-employer plans, considering that the usual deadline to send a complete actuarial valuation report is six months, the deadline to send an actuarial valuation for the purchase of annuities has rather been extended from four to six months.

Actuarial information summary

The actuarial information summary that must normally accompany the actuarial valuation reports is no longer required in the case of a partial actuarial valuation.

Legal references: sections 119, 121 and 146.16 of the *Supplemental Pension Plans Act*

Additional payment option during the employer's insolvency

Where a member or a beneficiary whose pension in payment has been reduced following the termination of the pension plan or during the withdrawal of the employer from a plan because the employer is insolvent, the member or beneficiary has two options:

1. have an insurance company purchase a reduced pension;
2. have his or her reduced pension temporarily administered by Retraite Québec, who will later purchase it from an insurance company.

A third option has now been added: a person whose pension is paid can now choose to transfer the value of the reduced pension into another locked-in retirement vehicle, such as a life income fund (LIF). That option also applies to negotiated contribution multi-employer plans according to the conditions and terms prescribed by regulation[3].

Legal references: sections 146.42.1 and 230.0.0.3 of the *Supplemental Pension Plans Act*

Use of surplus assets during the plan's existence

Amendments to the clauses of use respecting surplus assets

The *Supplemental Pension Plans Act* provides that every pension plan that did not have any provisions related to the use of surplus assets during the plan's existence had to be amended by the plan empowered to do so before 22 February 2019.

If the amendment has not been made within that time period, the administrator must amend the plan to provide a clause to use the surplus assets by default, without being required to undergo the consultation process for members and beneficiaries described in sections 146.4 and 146.5 of the *Supplemental Pension Plans Act*, or obtain the consent from the person or body empowered to amend the plan, in accordance with the rules provided for in the second paragraph of section 288.1.2 of the *Supplemental Pension Plans Act*.

The *Supplemental Pension Plans Act* was amended to provide that the rules regarding the implementation of a clause to use the surplus assets by default do not apply to defined-contribution plans. Regarding those plans, if they do not include provisons pertaining to the appropriation of surplus assets, they must be amended within a reasonable period of time, but no deadline has been specified on that matter.

Legal references: paragraph 18 of section 14 and section 288.1.2 of the *Supplemental Pension Plans Act*

Contribution holiday

From now on, the appropriation of surplus assets to the payment of current service contributions (contribution holiday) must cease on the date of any actuarial valuation or any notice on the financial position of the pension plan that shows that the conditions to take a contribution holiday are no longer met, rather than end at the end of the fiscal year.

Legal reference: section 146.9.1 of the *Supplemental Pension Plans Act*

3. In April 2021, the regulatory provisions have not yet been made.

Internal by-laws

For several years, the pension committee has been required to adopt internal by-laws establishing its rules of operation and governance. It ensures that the by-laws are complied with and reviews them regularly. The requirement to indicate in the internal by laws the measures to be taken to quantify the risks to which the plan is exposed has been removed. Those risks are not only financial but can be difficult to quantify. For example, it can be the risk of losses or errors in computer data. The first function of internal by-laws is to adopt measures to avoid those risks or minimize the effects.

Legal reference: section 151.2 of the *Supplemental Pension Plans Act*

Simplification of the withdrawal process of an employer in certain situations

Plan with defined-contribution benefits

The amendment to the plan process allowing for the withdrawal of an employer is lessened where the benefits accrued to all the members and beneficiaries affected by the withdrawal of an employer that is a party to a multi-employer pension plan are defined-contribution benefits. The amendment is therefore not subject to the authorization of Retraite Québec and the pension committee is exempted from the requirement to provide a report on the employer withdrawal. In addition, the members' and beneficiaries' benefits affected by the withdrawal of the employer may be maintained in the plan if the plan so provides.

If the plan allows the members and beneficiaries affected by the withdrawal of an employer to retain their defined-contribution benefits in the plan, the notice informing them of the withdrawal must mention that new option. It must also specify that at least 10 days are allowed for members and beneficiaries to communicate their choice, and if no choice is made, their benefits will be paid or maintained in the plan, as provided for in the plan.

Legal reference: section 199.2 of the *Supplemental Pension Plans Act*

Negotiated contribution multi-employer plans

From now on, an amendment to negotiated contribution multi-employer plans allowing for the withdrawal of a bankrupt employer may come into force not later than the end date of the fiscal year in which the bankruptcy occurred rather than come into force on the date of the bankruptcy.

Legal reference : section 146.17.1 of the *Supplemental Pension Plans Act*

Variable payment life pensions

Pension plans that include defined-contribution provisions can offer non-active members or spouses to receive a variable payment life pension.

To do so, a variable payment life pension fund will be created within the defined-contribution plan, in which the members will decide when they retire to transfer all or part of their accrued savings. A life annuity will then be paid, and the annuity will be adjusted periodically based on the fund's experience.

All the information related to how variable payment life pensions work will be prescribed by regulation, in particular with respect to establishing the amount of the pension that may be purchased with the sums transferred to the fund and the rules on later adjustments.

However, a variable payment life pension fund can be established only once the federal tax rules and the *Regulation respecting supplemental pension plans* have been amended.

Legal reference: section 90.2 of the *Supplemental Pension Plans Act*

Special measures relating to the municipal and university sectors

Accessibility to member-funded pension plans and target-benefit pension plans

A member-funded pension plan is a limited liability plan for the employer[4], as is the target benefit pension plan.

These types of plans are not covered by the *Regulation respecting the funding of pension plans of the municipal and university sectors* and by the *Act to foster the financial health and sustainability of municipal defined benefit pension plans* or the *Act respecting the restructuring of university-sector defined benefit pension plans*.

However, a member-funded pension plan or a target-benefit pension plan cannot be offered as a new plan to members of a plan covered by the *Act to foster the financial health and sustainability of municipal defined benefit pension plans* or the *Act respecting the restructuring of university-sector defined benefit pension plans* until the plan has been restructured and the members have finished paying the contributions they chose to pay to assume their part of the plan's deficiencies, where applicable.

Legal references: sections 318.15 to 318.18 of the *Supplemental Pension Plans Act*

Maximum employer contribution

For the municipal and university sectors, the employer contribution to a member-funded pension plan or a target-benefit pension plan is limited to 55% of the total contribution required for plan funding. The limit applies to each class of members covered by the plan under an employer of one of those sectors.

Regarding the existing member-funded pension plans, a transitional rule is provided for classes of members that do not comply with the limit of the employer contribution at the date on which Bill 68 was introduced, that is, 7 October 2020. They will have until 31 December 2023 to comply with the 55% rule.

Legal references: sections 146.101, 146.102 and 318.18 to 318.22 of the *Supplemental Pension Plans Act*

4. In a member-funded pension plan, the employer contribution is set and provided for in the plan text.

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