

Supplemental Pension Plans

# Newsletter **express**

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## **New measures for plan funding and administration**

On 13 December 2006, the Québec National Assembly passed Bill 30, *Act to amend the Supplemental Pension Plans Act, particularly with respect to the funding and administration of pension plans*. The Bill's provisions bring in important changes to strengthen the funding of defined benefit plans and bolster the administration of all supplemental pension plans.

This issue of *Newsletter Express* covers the main measures intended to ensure to plan members and beneficiaries greater security for their pension benefits and to improve the operations and governance activities of pension committees. It also covers the equity principle that will apply in the case of the appropriation of some or all of a plan's surplus assets to the funding of an amendment.

### **Funding measures**

Most of the measures related to the funding of defined benefit plans<sup>1</sup> will come into force on **1 January 2010**. The main measures are the following:

#### **Provision for adverse deviation (PFAD)**

To cover the risk related to economic fluctuations, every defined benefit pension plan will have to have a provision for adverse deviation (PFAD).

The provision will accumulate mainly as a result of actuarial gains. It will not result in the creation of specific deficits requiring amortization payments. Moreover, two other measures will contribute to its accumulation: until the PFAD is fully provisioned, the employer will not be allowed to take a contribution holiday, and amortization payments related to an unfunded improvement actuarial liability will have to be paid.

The amount of the PFAD will be specific to each plan. The rules for its calculation will be defined later by regulation. We can expect the plan's investment policy to be a determining element in setting the level of the PFAD. Considering the investment policies drawn up by most pension committees, we can expect the PFAD to be generally around 7% of a plan's liabilities.

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<sup>1</sup> Specific rules for the funding of municipality plans, university plans and the plan for public and private subsidized child care centres came into force on 31 December 2006.

### **Using letters of credit**

The temporary measures enacted by the *Act respecting the funding of certain pension plans* (June 2005) breaks new ground by allowing letters of credit to be used to fund a portion of a solvency deficit.

The permanent funding measures maintain this flexibility while setting different conditions for the use of such letters. Thus, an employer will be able to use a letter of credit to make all or part of its amortization payment for a solvency deficit. However, the amount of a letter of credit may not exceed 15% of the value of the plans liabilities calculated on the basis of solvency.

Regulatory provisions will define the content of letters of credit. Those provisions are expected to be similar to the ones used for the temporary measures.

### **Frequency of actuarial valuations**

An actuarial valuation will have to be carried out at the end of each fiscal year. The valuation can be partial if the plan is solvent and fully funded. However, every pension plan will have to be the object of a **complete** actuarial valuation at least once every three years.

### **The 90% rule**

Where a plan's degree of solvency falls below 90% following a plan amendment, the employer will have to pay into the pension fund a lump-sum amount equal to the lesser of the cost of the amendment and the sum required to bring the plan's degree of solvency up to 90%.

### **The equity principle**

Where an employer wants to appropriate all or part of the plan's surplus assets to fund an improvement, such appropriation will be considered in the light of equity between the affected group of members and the non-affected group of non-active members and beneficiaries. Both groups will have to be consulted by the pension committee.

If 30% or more of the members of a group express opposition to the proposed appropriation of surplus assets, such appropriation for the purpose of paying the cost of an amendment will be deemed to be inequitable with respect to that group. However, in spite of the opposition of one of the two groups consulted, the employer will still be able to make the amendment and to fund it by an appropriation of surplus assets.

Thereafter, a member or a beneficiary who is opposed to the appropriation can institute legal proceedings. In determining the equitability of an appropriation of surplus assets, several factors will have to be taken into consideration, including the characteristics of the benefits (e.g., whether indexed or not), the origin of the surplus assets, the plan's history and the past practices with respect to amendments and the use of surplus assets.

Note that the employer will not have to follow the procedure for applying the equity principal if the plan text already confirms the employer's right to appropriate surplus assets to pay the cost of plan amendments.

## **Administration measures**

The amendments brought in by the recently enacted Bill with respect to plan administration apply to all supplemental pension plans. They clarify the role and responsibilities of the members of pension committees and of the other players in plan administration. Moreover, they require that all pension committees adopt operating and governance rules.

Unless otherwise indicated below, those amendments **came into force on 13 December 2006**. The main elements are the following:

### **Role and responsibilities of pension committee members**

The recently enacted Bill clarifies the personal responsibility of the members of pension committees by establishing a presumption of prudence provided the committee acts in good faith and bases its decisions on the advice of an expert. This new measure is intended to protect pension committee members by encouraging them to consult competent advisors.

The pension fund must compensate pension committee members for any loss sustained in the performance of their duties provided they have not committed any fault. Furthermore, the pension fund can compensate pension committee members who are covered by liability insurance, up to the maximum deductible amount of such insurance provided they have not committed any deliberate or gross fault. However, before compensating its members, the pension committee will have to take into account the financial impact on the pension plan's assets, among other factors. The new compensation measures **came into force on 14 June 2006**.

The recently enacted Bill also provides that it is the pension committee that selects and hires its delegates, service providers and representatives. This change is intended to make it clear that this is a committee responsibility. However, the committee can delegate the responsibility to a competent person.

### **Responsibilities of the other players**

The recently enacted Bill provides that a service provider or representative exercising a discretionary power of the pension committee is deemed to be a delegatee of the committee.

Delegatees, service providers and representatives must submit to the pension committee a report on their work and point out any situation whose financial impact could adversely affect the financial interests of the pension fund. If the committee fails to correct the situation, the service provider must inform the Régie des rentes du Québec.

Delegates, service providers and representatives may not, in the contracts made with the pension committee, exclude or limit their liability. Any clause to that effect is null and void. For contracts in effect or already terminated on 13 December 2006, such clauses are null and void if they are abusive.

### **Operations and governance of pension committees**

**Between now and 13 December 2007**, pension committees will have to adopt internal by-laws establishing its rules of operation and governance. In particular, the by-laws will determine the duties and obligations of the pension committee's members, the rules of ethics to which they are subject and the measures to be taken to provide professional development for them.

The recently enacted Bill provides that the internal by-laws take precedence over the plan text, except for the following matters:

- the rules governing the appointment of the committee's directors;
- the quorum for committee meetings and the granting of a casting vote;
- the proportion of committee members who must participate in a decision in order for it be valid.

The plan text can, however, provide that the committee's internal by-laws prevail in respect of those matters.

The recently enacted Bill also provides that expenses incurred for the professional development of committee members are plan administration costs.

### **Other measures that came into force on 13 December 2006**

- Any party who wishes to contest a decision or an order rendered by the Régie des rentes du Québec since 13 December 2006 must from then on apply directly to the Administrative Tribunal of Québec
- In a plan that has both defined contribution and defined benefit components and whose assets are insufficient, the sums credited to a member under the defined contribution component will be paid in full following cessation of active membership or plan termination.

This issue of *Newsletter Express* summarizes the main amendments brought in by the recently enacted Bill. More detailed information will be contained in documents to be published between now and 2010. Thus, *Newsletter* number 21, which will be published in the coming weeks, will cover the measures that came into force on 13 December 2006.

You can consult the [Supplemental Pension Plans Act](#) on the Régie's Web site, at [www.rrq.gouv.qc.ca/en](http://www.rrq.gouv.qc.ca/en), under Publications / Supplemental pension plans / Law and regulations.

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