

New funding and governance rules for defined benefit pension plans: the legislature takes a position

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1. Introduction

In the past few years, several companies have experienced financial difficulties with their defined benefit private pension plans as a result of several factors including, in particular, poor investment performance due to falling stock markets, declining interest rates, the aging of beneficiaries and the increase in the number of retirees.

From a reading of the parliamentary debates and the adoption of the temporary relief measures regarding the consolidation of solvency deficits and solvency deficit amortization requirements, one can note the legislature's growing interest in making changes to the pension plan funding rules.

On June 14th, Bill 30, entitled *An Act to amend the Supplemental Pension Plans Act, particularly with respect to the funding and administration of pension plans*, was tabled in the National Assembly by Ms. Michelle Courchesne, the Minister of Employment and Social Solidarity.



It is useful to review the highlights of the bill, which may bring drastic changes in the pension plan field.

2. Principal amendments introduced by Bill 30

• Provision for adverse deviations

The bill provides for the establishment of a provision for adverse deviations. This provision must be accumulated in the pension fund before a contribution holiday is permitted: this safety cushion, commonly known as a «contingency reserve», would be imposed by the Act for the first time.

It should be noted that the Régie would determine the method for calculating this provision by regulation.

• Annual actuarial valuation

Every pension plan would be required to be the subject of a complete actuarial valuation once a year. However, the valuation could be partial, with an annual certification that the plan is both solvent and funded at the end of each fiscal year, provided that the assets of the plan do not include any letters of credit.

This bill was presented following a public consultation conducted in 2005 by the Régie des rentes du Québec and by Minister Courchesne, in which many major stakeholders participated.

The purpose of the bill is stated as follows:

«The purpose of this bill is to improve the funding of pension funds in order to protect the pension benefits of plan members and beneficiaries. A further purpose of the bill is to enhance the governance of pension plans and better define the scope of the responsibilities of pension committee members and other persons involved in the administration of pension plans.»



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In these circumstances, a complete valuation would have to be performed no later than three (3) years after the date of the last complete actuarial valuation. This new measure would allow the Régie to monitor plans more frequently.

• Right to have one's pension insured

Under the new Act, new retirees would have the right to have their pensions insured. They could request that their pensions be guaranteed by an insurer, in accordance with the conditions prescribed by regulation, instead of being paid by the pension fund.

Thus, if the employer went bankrupt with an under-funded plan, the pension would not be reduced.

It should be noted that the conditions in accordance with which a member's pension would have to be guaranteed by an insurer, as well as the terms and conditions of the pension contract, would be prescribed by regulation.

• Use of a letter of credit by the employer

An employer could provide the pension committee with one or more letters of credit, which would relieve the employer from paying all or part of the portion of the employer contribution related to an amortization payment determined in relation to the solvency deficiency. This option allows the employer greater flexibility in funding pension plans.

It should be noted that the amount of these letters of credit could not exceed 15% of the liabilities of the plan. Finally, the conditions under which an employer could provide a letter of credit to the pension committee, as well as the form, amount, terms and conditions thereof would be prescribed by regulation.

• Internal governance and responsibilities of pension committees

One of the key new measures is the establishment of a presumption that a pension committee has acted with prudence and diligence if it has acted in good faith and on the basis of an expert's opinion. This measure would favour consultation of various experts in pension plan matters.

Several other new measures define the role and responsibilities of delegates, representatives, service providers and pension committees. For example, if the pension committee delegates its duties or powers to a service provider, the service provider would assume the same obligations and liabilities as the pension committee would have been required to assume. Another interesting measure provides for the nullity of any clause that excludes or limits liability in a contract made with a delegate, a representative or a service provider.

In addition, the pension committee would be required to adopt internal by-laws regulating its operations and governance. It would also have to ensure that they are complied with and review them regularly. In the event of a discrepancy between the text of the pension plan and the text of the internal by-laws, the by-laws would prevail.

The internal by-laws would be required to establish, in particular,

(1) the respective duties and obligations of the committee members, delegates, representatives and service providers;

(2) the rules of ethics to which those persons are subject;

(3) the rules governing the appointment of the chairperson and secretary;

(4) the procedure applicable at meetings and the frequency of meetings;

(5) the measures to be taken to provide training to committee members;

(6) the measures to be taken to manage risk;

(7) the internal controls;

(8) the books and registers to be kept;

(9) the rules to be followed when selecting, remunerating, supervising and evaluating delegates, representatives and service providers; and

(10) the standards that apply to the services rendered by the committee, its delegates and the service providers, including those relating to communications with plan members and beneficiaries.

Consequently, it would be essential to ensure adequate drafting of the internal by-laws, given the predominance conferred on them by the legislature. Thorough training of the pension committee members would also be vitally important.

- **Review by the Régie of its own decisions would be abolished**

To accelerate the process for contesting decisions and orders of the Régie des rentes, the bill provides for the abolition of applications for review by the Régie des rentes. Thus, any interested person could apply directly to the Tribunal administratif du Québec for review of a decision or order of the Régie.

- **Principle of equity for workers**

The bill establishes a principle of equity between the group of active members and the group of inactive members and beneficiaries if a proposed amendment to a pension plan would be funded by using surplus assets of the plan.

- **Coming into force**

Several of these measures would come into force on January 1st, 2010, while other measures, such as those concerning the governance of pension committees, would come into force on the date of assent to the Act.

It should be noted that special funding rules for the plans of municipalities, universities and childcare centres would be provided for subsequently by regulation.

3. Conclusion

The work of the National Assembly was adjourned on June 15th, 2006 and will be resumed on October 17th. This is when the bill will be put back on the order paper for adoption in principle and detailed study.

Please be assured that we will keep you informed of legislative developments as they become more official.

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