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New Developments Regarding Pension Plans: Relief Measures Extended and the Passing of Bill 39 on Voluntary Retirement Savings Plans

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RELIEF MEASURES EXTENSION
On November 27, 2013, the Government of Québec published the *Regulation Providing New Relief Measures for the Funding of Solvency Deficiencies of Pension Plans in the Private Sector* (the "**New Regulation**"), which will come into effect on December 31, 2013.

The New Regulation seeks mainly to extend the relief measures which had been provided for in the *Regulation Providing Temporary Relief Measures for the Funding of Solvency Deficiencies*[1] (the "**2012 Regulation**") and which are set to expire by the end of 2013, for an additional two years.

An employer may decide to avail itself of one or many of the relief measures discussed below by sending written instructions to this effect to the plan's pension committee. As was the case with the 2012 Regulation, the New Regulation does not require the employer to obtain the consent of pension plan members in order to avail itself of the relief measures. Furthermore, an employer may elect to employ the relief measures even if it availed itself of one or more of the measures set out in the 2012 Regulation.

The relief measures set out in the New Regulation are similar to those included in the 2012 Regulation and allow for the following:

1- Asset Smoothing on a Solvency Basis
Asset smoothing, which mainly consists of assessing assets by allocating the fluctuations of their value over a certain period, can be used for the purpose of evaluating the plan's assets on a solvency basis. The smoothing method chosen must be set out in the written instructions provided by the employer to the pension committee and the smoothing period elected may not exceed five years. If the employer availed itself of asset smoothing under the 2012 Regulation and wishes to do so under the New Regulation, the smoothing method chosen must be the same as the one used in accordance with the 2012 Regulation.

Notwithstanding this relief measure, the assets used for the purpose of establishing the solvency ratio of the pension plan must be taken at their liquidation value and therefore, without asset smoothing. It should be noted that some provisions of the *Supplemental Pension Plans Act* (the "**SPPA**") and its regulations refer to the solvency ratio of a pension plan or require the use thereof for a number of purposes. For instance, when paying out the benefits of a member who requests the transfer of the value of his benefits out the pension plan, the SPPA provides that if the plan is not

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fully solvent at that time (i.e. if the solvency ratio is less than 100%), the value of the benefits can only initially be paid out in proportion to the solvency ratio of the plan.

2- Consolidation of Solvency Deficits

The New Regulation allows for the consolidation of all previous solvency deficits, that is to say it allows for the grouping of these previous deficits into a single solvency deficit. The 2012 Regulation did not permit the consolidation of a deficit related to an amendment made after December 30, 2008. This restriction was not included in the New Regulation.

3- Extension of the Amortization Period of the Solvency Deficit over a Maximum Period of 10 Years

The solvency deficit determined as of the date of the first actuarial valuation after December 30, 2013 (in most cases, as of December 31, 2013) may be amortized over a period ending, at the latest, 10 years after the date of its determination rather than over a five-year period. The same is true with respect to the solvency deficit determined as of the date of the actuarial valuation following the one referred to above.

The choice to use or not to use the relief measures provided under the New Regulation must be made at the time of the first actuarial valuation of the plan occurring after December 30, 2013. Finally, pursuant to the New Regulation, application of the new relief measures will end on the earlier of the following dates:

> The date of the first actuarial valuation showing that the plan is solvent;
> The end date of the plan's first fiscal year beginning after 31 December 2014;
> The date set out in the written notice sent by the employer to the pension committee. This date must mark the end of the plan's fiscal year.

It should be noted that the New Regulation does not apply to pension plans in the municipal and university sectors. These plans are instead addressed by another regulation, which was also published on November 27, 2013[2] and which will come into effect on December 31, 2013. This regulation essentially provides for the extension of a relief measure for the pension plans in these sectors which has already been implemented, but with some modifications.

THE PASSING OF BILL 39

Bill 39 - Voluntary Retirement Savings Plans Act was passed by the National Assembly on December 3, 2013. However, as of the drafting of this article, the Bill has not yet received Royal Assent.

Many amendments were made to this Bill during the detailed review conducted by the Commission des finances publiques. According to the amendments attached to the Commission's report, it would appear that most of the provisions of the Act will come into effect on July 1, 2014 and that the deadline for employers to subscribe to a voluntary retirement saving plan (VRSP) will depend on the number of people they employ on a given date. Thus, an employer with 20 employees or more on June 30, 2016 will be required to subscribe to a VRSP no later than December 31, 2016 while an employer with between 10 and 19 employees on June 30, 2017 will have until December 31, 2017 to subscribe to such a plan. An employer with between 5 and 9 employees will be required to subscribe to a VRSP as of the date determined by regulation, but which cannot be earlier than January 1, 2018.

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[1] This Regulation was published on May 30, 2012.

[2] That is, by the *Regulation to Amend the Regulation Respecting the Funding of Pension Plans of the Municipal and University Sectors*.

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