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Quebec Government Tables Bill to Implement its Pension Plan Action Plan

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In our January 2014 bulletin, we provided an overview of the Quebec government's action plan aimed at [Translation] "correcting and restoring the situation of pension plans". Also in that bulletin, we noted that in February 2014, the government was planning to introduce the first bill designed to set up the restructuring process for municipal pension plans.

The government made good on its promise. On February 20, 2014, the Minister of Employment and Social Solidarity, Agnès Maltais, tabled Bill 79 in the National Assembly entitled *An Act to Provide for the Restructuring of and Make Other Amendments to Municipal Defined Benefit Plans*.

The Bill essentially sets out the parameters for the restructuring of certain municipal defined benefit plans. As mentioned in the Bill, the purpose of the restructuring process is to allow, exceptionally and for a limited period of time, for the review of some of the rules of these plans with the goal of placing them on more sound financial footing and ensuring their stability.

MANDATORY RESTRUCTURING

GENERAL REMARKS

According to the Bill, the restructuring process is only mandatory for certain plans in the municipal sector, namely:

> Plans which, according to an actuarial valuation for the period ending on December 31, 2013, are funded at less than 85%;
> Plans that offer a subsidy for early retirement before the age of 55.

An actuarial valuation will be necessary in order to determine whether or not the funding level of a given plan is less than 85% as of December 31, 2013. The valuation will have to be sent to the Régie des rentes du Québec no later than June 30, 2014.

In situations where the restructuring process is not mandatory, the municipal body may nonetheless undertake such a process where the body and the active members of the plan submit to the process voluntarily.

The objectives of the parties to the restructuring process must be to ensure the sound financial footing and the stability of the plan. To that end, the parties must negotiate measures aimed at:

1. Attaining a minimum funding level of 85%;
2. Abolishing the subsidy for early retirement before the age of 55;
3. Providing for equal cost sharing for current service;
4. Abolishing the additional pension benefit provided for in the *Supplemental Pension Plans Act* (the "**SPPA**").

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The Bill sets out certain rules regarding the implementation of the measures mentioned in points 2 and 3 above.

The Bill states that cost sharing of any past deficits may be negotiated by the parties, along with the amendment or abolition of any benefit provided for in the plan, with the exception of the normal pension.

Pensions granted to retirees and beneficiaries cannot be reduced. However, indexation of those pensions may be suspended or their indexation formula amended. To make such a change (suspension or modification of the indexation), retirees and beneficiaries must first be consulted and no change can be made if 30% or more of the retirees and beneficiaries are opposed to it.

The Bill also sets out other important rules in the case of plans for which the restructuring process is initiated (regardless of whether the process is mandatory or voluntary), including the following:

- Negotiations must begin and continue diligently and in good faith;
- Surplus assets of the plan cannot be used by the municipal body to take a contribution holiday unless a fiscal rule requires it to do so;
- Any additional obligation arising from an amendment to the plan must be paid in full on the day following the date of the actuarial valuation determining the value of the additional obligation.

THE THREE PHASES OF THE RESTRUCTURING PROCESS

The three phases of the restructuring process correspond to those mentioned in the government's action plan (see our January 2014 bulletin). The Bill therefore provides for a negotiation phase, a conciliation phase and ultimately the settlement of the dispute by the Commission des relations du travail (the "**Commission**"). The way in which each phase of the process must be carried out is clearly indicated in the Bill.

The total duration of the restructuring process also corresponds to what was announced in the action plan. A six month period is provided for each phase of the process, although certain administrative delays stemming from the transition between each phase should be expected (for example, between the end of the negotiation period and the appointment of the conciliation officer or between the end of the conciliation period and the transmission of the conciliation officer's report to the Commission).

THE PARTIES TO THE RESTRUCTURING PROCESS

In a unionized setting, the parties to the restructuring process are the municipal body and the union(s) representing the active members of the plan. In particular, the Bill states that the existence of a collective agreement does not preclude the parties from undertaking the restructuring process and that the signing of an agreement in connection with the process, as well as any decision made by the Commission, has the effect of amending the collective agreement.

A municipal body must take the necessary measures to allow non-unionized active members of a pension plan to submit their observations on the proposed amendments to the plan. If 30% or more of the active members oppose the proposed amendments, they cannot be adopted, unless a decision of the Commission so authorizes.

REQUIRED AMENDMENTS

Pension plans in the municipal sector that are not subject to the restructuring process summarized above are nonetheless covered by Bill 79, which provides that such plans must be amended to:

- Include equal cost sharing for current service;
- Abolish the additional pension benefits provided for in the SPPA.

The Bill sets out rules regarding the implementation of such amendments. It appears that in

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unionized setting, the amendments must be negotiated with the union(s).

PROVISION FOR ADVERSE VARIATIONS

In addition to the foregoing, every pension plan in the municipal sector must, according to the Bill, be amended to include a provision to protect it against adverse variations. The provision is made up of a reserve or stabilizing fund and is funded by means of an additional current service contribution. The Bill contains special rules regarding both the negotiation of the provision for adverse variations and its implementation. The Bill would allow this new requirement to come into effect progressively. At the end of the implementation period, an annual contribution equivalent to 20% of the current service contribution will have to be paid to the reserve or fund.

CONCLUSION

The election called in February 2014 means that Bill 79 died on the order paper and will have to be reintroduced by the new government if it wishes to move ahead with it. Ultimately, it will be interesting to see what impact the election will have on the government's action plan and the first concrete steps taken to implement it.

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