Knowledge & Insights

MORNEAU SHEPELL

Special Communiqué

Bill to Restructure University-Sector Defined Benefit Pension Plans

The Quebec government introduced Bill 75, called *An Act respecting the restructuring of university-sector defined benefit pension plans and amending various legislative provisions* to the National Assembly on November 11, 2015.

Under Bill 75, any pension plan in the university sector that is not a defined contribution or hybrid plan must be restructured by December 31, 2017.

For this purpose, a complete actuarial valuation as at December 31, 2014 must be submitted to the Régie des rentes du Québec ("Régie") by December 31, 2015. The economic and demographic assumptions used for this valuation must be the same as those for the actuarial valuation submitted to the Régie at the end of the fiscal year preceding December 31, 2014. The discount rate may, however, be modified up to a maximum of 6%. Furthermore, the actuarial valuation cannot take any margin for adverse deviation into account and the payments related to funding deficiencies determined in an actuarial valuation prior to December 31, 2014 must be eliminated.

In cases where an actuarial valuation as at December 31, 2014 has already been submitted to the Régie, an amended version that complies with Bill 75 must be submitted within the same time periods.

General Restructuring Measures

All pension plans that come under Bill 75 will be subject to the following conditions, for service from January 1, 2015, unless the parties come to an agreement before December 31, 2017.

- A stabilization fund must be established on January 1, 2015. A stabilization contribution equal to 10% of the current service contribution (determined without taking into account any margin for adverse deviation) must be paid into the fund by January 1, 2018. In addition to the stabilization contributions, the fund will be funded by actuarial gains and accrued interest from pension fund performance.
- Plan costs (current service contribution, amortization payment and stabilization contribution) must be shared equally by January 1, 2018. However, the parties may agree on a sharing arrangement where active plan members pay a minimum of 45% of plan costs.

  When active members were contributing 35% or less of total contributions, payment of 50% of the increase resulting from the application of the equal cost-sharing provision may be delayed to no later than January 1, 2018, with the remaining portion of the increase being paid no later than January 1, 2021.

Special restructuring measures

Bill 75 provides that a pension plan must be restructured if the sum of the current service contribution and the amortization payment relating to the technical funding deficit determined as at December 31, 2014 exceeds 21% of the total payroll for active members. If the parties so agree, the deficit may be reduced by the contributions made to an already existing stabilization fund. However, if the sum is equal to or less than 21% of payroll, the restructuring will be left to the discretion of the parties. Even in such a case, the parties must still agree before January 1, 2018.

The 21% can be increased by 0.6% for each full year of deviation if the average age of active members is over 45 on December 31, 2014. In addition, a maximum increase of 0.5% is allowed if women make up more than 50% of active members.

When benefits are being restructured to reduce the total plan cost in order to meet the 21% limit, the following modifications can be implemented:

- For service prior to January 1, 2015:
  - A reduction in the automatic indexation of pensions for the active member group and for the retired members group.
  - A reduction in ancillary benefits (the accrual rate for the normal pension cannot be reduced for service prior to January 1, 2015).
- For service from January 1, 2015:
  - A reduction in the current service contribution; this reduction is not subject to any restrictions.

Compared to the requirements of *An Act to foster the financial health and sustainability of municipal defined benefit pension plans*, the parties may, if they wish, keep the automatic indexation provisions already set out in the plan.

The participation of the retired members group in the restructuring effort is limited to the value of the automatic indexation of their pensions and cannot, under any circumstances, exceed 50% of the portion of the deficit attributable to this group. If automatic pension indexation is to be reduced, the value of the reduction for retired members cannot exceed the value of the reduction for active members, proportional to the liability of each group. In such a case, the pension committee must notify each retired member and each beneficiary in writing that the automatic indexation of their pension is being amended.

With respect to the active members group, their participation in the benefit restructuring is limited to 50% of the remaining deficit (that is, the amount remaining after taking into account the deficit assumed by retired members).

If the restructuring efforts for service prior to January 1, 2015 do not reduce the total plan cost to 21%, the current service contribution must be reduced by an amount sufficient to reach the 21% maximum.

The parties could also agree to maintain the level of benefits for service prior to January 1, 2015 and achieve the 21% limit solely by reducing the current service contribution.

The portion of the deficit to be funded by the employer must be amortized over a maximum period of 15 years and cannot be consolidated in subsequent actuarial valuations.

The parties must reach an agreement within 12 months of undertaking their negotiations, which must start no later than February 1, 2016. The negotiating period may, however, be extended twice, for three months each time. Upon expiry of the negotiating period, an arbitrator will be appointed and must issue a decision by December 31, 2017 on the amendments to be made to the plan.

Other aspects

Retired member status

For the purposes of Bill 75, the following plan members and beneficiaries are considered retired members:

- Those who were receiving a pension on December 31, 2014;
- Those who started receiving a pension during the period after December 31, 2014 to November 11, 2015;
- Those who entered into a retirement agreement before November 11, 2015 providing for the payment of their pension within 12 months after that date;
- Active members who entered into a phased retirement agreement with their employer before November 11, 2015, when such agreement has a maximum term of five years after that date and provides for the reduction of their work time by at least 20% for the duration of the agreement and their retirement at the end of the agreement.

However, members who were receiving phased retirement benefits as at December 31, 2014 are not considered retirees at that date, unless an agreement with a maximum term of five years entered into with the employer before November 11, 2015 already provides for the reduction of their work time by at least 20% for the duration of the agreement and their retirement at the end of the agreement.

Payment of pension or death benefits before November 11, 2015

Bill 75 provides that members whose benefits were transferred or refunded before November 11, 2015, or for which an application for transfer was filed before that date, are not affected by the pension plan's restructuring measures.

Likewise, the death benefit to which the spouse or beneficiaries of a deceased member are entitled before November 11, 2015 must be established without taking the pension plan's restructuring into account.

Commencement or payout of benefits on or after November 11, 2015

Bill 75 provides that when the pension plan must be restructured because the sum of the current service contribution and the amortization payment exceeds 21% of the total payroll for active members, or the sum is equal to or less than 21% but the parties have decided to restructure in any case, then:

- only part of the benefits for which payment began on or after November 11, 2015 may be paid by the pension committee during the restructuring period; and
- only part of the member's benefits to be paid on or after November 11, 2015 and of the death

benefits to which the spouse or beneficiaries of a member deceased on or after November 11, 2015 may be paid by the pension committee during the restructuring period.

Impact of Bill 75 on relief measures

Pension plans which are taking advantage, in 2015, of the relief measures provided in the *Regulation respecting the funding of pension plans of the municipal and university sectors* may continue to benefit from such measures no later than December 31, 2017.

Contribution holidays

Surplus assets may no longer be allocated to the payment of employer contributions, unless the plan is 125% funded.

Elimination of the additional pension benefit

The provisions of the SPP Act providing for the payment of an additional pension benefit are eliminated (minimum indexation in the event of termination before retirement).

Variable benefits

Bill 75 also amends the SPP Act by allowing any plan that has defined contribution provisions to pay variable benefits to a member from the funds in the member's account. The conditions governing the payment of variable benefits will be prescribed by regulation.

This measure affects all pension plans that have defined contribution provisions, not just university-sector pension plans.

Conclusion

We note that the impact of Bill 75 may be significant. It is important to point out that all parties must assess the possible consequences of the bill on their own pension plans. We will keep you updated on developments related to Bill 75.

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