

Regulations and other Acts

Gouvernement du Québec

O.C. 1090-2012, 21 November 2012

Supplemental Pension Plans Act
(chapter R-15.1)

An Act to amend the Supplemental Pension Plans Act and to provide for the possibility of opting to receive a pension paid by the Régie des rentes du Québec during the existence of certain plans in the pulp and paper sector (2011, chapter 8)

AbitibiBowater Inc.

—**Supplemental pension plans affected by the arrangement regarding AbitibiBowater Inc. under the Companies' Creditors Arrangement Act**
—**Amendment**

CONCERNING the Regulation to amend the Regulation respecting the supplemental pension plans affected by the arrangement regarding AbitibiBowater Inc. under the Companies' Creditors Arrangement Act

WHEREAS, under the second paragraph of section 2 of the Supplemental Pension Plans Act (R.S.Q., c. R-15.1), the Government may, by regulation and on the conditions it determines, exempt any pension plan it designates from the application of all or part of this Act, particularly by reason of the special characteristics of the plan, and prescribe special rules applicable to the plan;

WHEREAS, under the first paragraph of section 2 of the Act to amend the Supplemental Pension Plans Act and to provide for the possibility of opting to receive a pension paid by the Régie des rentes du Québec during the existence of certain plans in the pulp and paper sector (2011, c. 8), the Government may, where the conditions provided for under that paragraph are met and where it makes a regulation under section 2 of the Supplemental Pension Plans Act relating to a pension plan to which Chapter X of that Act applies and to which an employer in the pulp and paper sector is a party, provide by regulation that members and beneficiaries of the pension plan may request that they receive benefits as a pension paid out of the assets administered by the Régie des rentes du Québec under section 230.0.0.4 of that Act without the plan having been amended to allow for the withdrawal of the employer who is a party to the plan or without the plan having been terminated;

WHEREAS, under the fifth paragraph of section 2 of the Act to amend the Supplemental Pension Plans Act and to provide for the possibility of opting to receive a pension paid by the Régie des rentes du Québec during the existence of certain plans in the pulp and paper sector, a regulation made by the Government under that section or pursuant to section 2 of the Supplemental Pension Plans Act, with respect to a pension plan referred to in section 2 of the former Act, is not subject to the requirements of sections 8 and 17 of the Regulations Act (R.S.Q., c. R-18.1) and may, if it so provides, have retroactive effect to a date that is prior to the date of its publication but not prior to 31 December 2008;

WHEREAS on 17 August 2011, the Government made the Regulation respecting the supplemental pension plans affected by the arrangement regarding AbitibiBowater Inc. under the Companies' Creditors Arrangement Act (c. R-15.1, r. 6.1);

WHEREAS it is expedient to amend the Regulation to provide that certain members of these pension plans may request that their benefits be transferred and that members and beneficiaries of these pension plans may request that their benefits be paid from the assets administered by the Régie des rentes du Québec under section 230.0.0.4 the Supplemental Pension Plans Act without the plan's having been amended to allow for the withdrawal of the employer who is a party to the plan or without the plan's having been terminated;

IT IS ORDERED, therefore, on the recommendation of the Minister of Employment and Social Solidarity:

THAT the Regulation to amend the Regulation respecting supplemental pension plans affected by the arrangement regarding AbitibiBowater Inc. under the Companies' Creditors Arrangement Act, attached hereto, be made.

JEAN ST-GELAIS,
Clerk of the Conseil exécutif

Regulation to amend the Regulation respecting supplemental pension plans affected by the arrangement regarding AbitibiBowater Inc. under the Companies' Creditors Arrangement Act

Supplemental Pension Plans Act
(chapter R-15.1, s. 2)

An Act to amend the Supplemental Pension Plans Act and to provide for the possibility of opting to receive a pension paid by the Régie des rentes du Québec during the existence of certain plans in the pulp and paper sector (2011, chapter 8, s. 2)

1. Section 6 of the Regulation respecting supplemental pension plans affected by the arrangement regarding AbitibiBowater Inc. under the Companies' Creditors Arrangement Act (c. R-15.1, r. 6.1) is amended

(1) by replacing, in the first paragraph, "Unless" by "For the purposes of this Regulation, notwithstanding Division VI.1, and unless".

(2) by striking from the second paragraph "for the purposes of this Regulation,".

2. Section 11 of the Regulation is amended by the insertion of the following paragraph:

"The assets and liabilities that the benefits of the members and beneficiaries represent and which are paid under the provisions of Division VI.1 on the basis of the degree of solvency of the plan as at 31 December of a given year shall not be included for the purpose of calculating the technical actuarial deficiency at that date."

3. The Regulation is amended by the insertion, after section 46, of the following Division:

"DIVISION VI.1 RIGHT OF CERTAIN MEMBERS AND BENEFICIARIES TO OPT TO HAVE A PENSION PAID OUT OF THE ASSETS ADMINISTERED BY THE RÉGIE

§1. *Right to the option*

46.1. The option of having a pension paid out of the assets administered by the Régie under section 230.0.0.4 of the Act shall be offered to each member and beneficiary to whom, on 31 August of a given year, a pension is being paid under the plan since at least 1 January of that year.

The pension paid by the Régie is the pension, in relation with service prior to 1 January 2011, reduced according to the degree of solvency of the affected component of the pension plan as at 31 December of the year for which the payment option is chosen.

The assets over which the Régie exercises its powers under the provisions of subdivision 4.0.1 of Division II of Chapter XIII of the Act are the assets of the plan that correspond to the part of the benefits of the members and beneficiaries who have opted to have a pension paid by the Régie that represents the value of the pension referred to in the second paragraph.

46.2. The option shall be exercised on the basis of the estimated degree of solvency of the affected component of the pension plan as at 31 December of the year for which the payment option is chosen.

It is exercised on the condition that, as provided under sections 46.9 and 46.10, the degree of solvency of the affected component, determined no later than 31 May of the following year, is at least equal to the estimated degree of solvency.

46.3. The time allotted the members and beneficiaries to transmit the option chosen to the pension committee expires on 15 December of the year for which the payment option is chosen.

Should a member or beneficiary not inform the pension committee of the option chosen by the expiry of that time limit, all benefits held by that person shall remain in the pension plan.

46.4. To estimate the degree of solvency of the affected component of the pension plan as at 31 December of the year for which the payment option is chosen,

(1) the solvency liabilities of the affected component, determined in the actuarial valuation as at 31 December of the preceding year, are projected for 31 December of the year in question, using the same interest rate as the one used to determine the liabilities in that valuation, where the rate is adjusted to take into account the one in effect on 31 August of the year in question.

(2) the assets of the affected component, determined as at the most recent date possible, are projected for 31 December of the year in question taking into account the expected long-term rate of return for the account of the affected component, in accordance with the investment policy of the plan, and is reduced by the estimated amount of the administration costs to be paid out of the account of the affected component in the event of termination.

The projection of the liabilities shall, to the extent possible, take into consideration, according to the type of members, the benefits payable during the current year. The projection of the assets shall, to the extent possible, take into consideration the contributions and benefits payable between the date on which the assets were determined and 31 December of the year in question.

§2. *Information to members and beneficiaries*

46.5. For the purpose of exercising the right to the option, the pension committee shall transmit to each member and beneficiary referred to in section 46.1 a statement of benefits determined as at 31 August of the year for which the payment option is chosen as well as the information required for exercising that option.

The statement of benefits, which is to be provided within the same time period as the statement of benefits referred to in section 112 of the Act, shall indicate:

(1) the estimated degree of solvency of the affected component of the pension plan as at 31 December of the year in question;

(2) the amount of the pension related to benefits resulting from service prior to 1 January 2011 paid to the member or beneficiary under the plan;

(3) the amount of the pension reduced according to the estimated degree of solvency of the plan that could be paid by the Régie;

(4) the effect any difference between the estimated degree of solvency and the degree of solvency, determined in accordance with section 46.8 will have on the option as referred to in sections 46.9 and 46.10;

(5) that the pension paid by the Régie has the same features as the pension to which the member or beneficiary is entitled under the pension plan;

(6) that choosing to have one's pension paid by the Régie constitutes the settlement of the benefits of the member or beneficiary;

The statement shall also indicate the expiry date of the time, set out in section 46.3, for informing the pension committee of the option chosen and that, should no choice be received by the pension committee before the expiry of the time set out, the benefits of the member or beneficiary shall remain in the plan.

The information provided by the Régie pertaining to the administration of the pensions it pays shall, among other things, accompany the statement.

46.6. Where the pension committee is informed of the formation of a representative association for the purposes of the pension plan of the members and beneficiaries to whom section 46.1 applies, the committee must enclose the notice required under section 113.1 of the Act with the statement.

46.7. The pension committee shall invite the members and beneficiaries referred to in section 46.1 to an information session on the option being offered. The notice of the session must be given in writing a minimum of five days prior to the meeting and the meeting must be held no later than 10 days before the expiry of the time set out under section 46.3 for informing the pension committee of the option chosen.

§3. *Confirmation of option*

46.8. No later than 31 May of the year following the one for which the payment option is chosen, the pension committee shall have determined the degree of solvency of the affected component of the plan as at 31 December of the for which the option was chosen.

46.9. Where the degree of solvency of the affected component of the pension plan is equal to or greater than the estimated degree of solvency, the members and beneficiaries who opted to have a pension paid out of the assets administered by the Régie are deemed to have confirmed their choice of option.

46.10. Where the degree of solvency of the affected component of the pension plan is less than the estimated degree of solvency, the pension committee shall, no later than 10 June of the year following the one for which the payment option is chosen, inform those members and beneficiaries who opted to have a pension paid by the Régie, and notify them that their benefits shall remain in the plan unless their choice of option is reiterated no later than 25 June.

The notice must be accompanied with a statement of benefits that includes the same information as the statement referred to in 46.5, with the exception of the information referred to in paragraph 4 of the second paragraph of that section, adjusted, however, on the basis of the degree of solvency determined and the expiry date set in accordance with the first paragraph.

§4. *Settlement process for benefits*

46.11. The value of the benefits, for the purposes of settling the benefits of the members and beneficiaries who have opted to have a pension paid by the Régie from the assets administered by the Régie, shall be determined after 1 July of the year following the one for which the payment option is chosen.

The pension committee shall proceed to pay the benefits within five business days following the date on which their value is calculated but no later than 15 July.

46.12. To determine the value of the benefits of the affected members and beneficiaries for the purpose of settlement, the premium determined using the assumptions for hypothetical wind-up and solvency valuations established by the Canadian Institute of Actuaries as applicable on the date on which the calculation is carried out shall be used.

46.13. Where the pension of the member or beneficiary has been guaranteed by an insurer for a value that exceeds the portion of the benefits of the member or beneficiary referred to in the third paragraph of section 46.1, the insurer shall, at the request of the pension committee, allocate the value of the surplus to the non-guaranteed benefits of other members or beneficiaries of the plan. Where such an allocation is not possible, the insurer shall pay into the pension fund the commuted value of the guaranteed pension on the date the benefits are paid or, where the contract does not provide for a commuted value, the fair market value of the guarantee determined on the basis of reasonable assumptions and cancellation fees.

In addition, the portion of guaranteed benefits included in the aggregate assets transferred to the Régie under this Division in relation with the plans as a whole for a given year may not be more than 50%. The guaranteed benefits in excess of that percentage shall be allocated or paid into the pension fund in accordance with the provisions of the first paragraph.

46.14. Notwithstanding section 46.9 or 46.10, the death of a member or beneficiary prior to the date on which the benefits are paid renders null the option of having a pension paid by the Régie from the assets of the plan where chosen by the member or beneficiary.

46.15. The pension committee shall, no later than the date of settlement, send to the Régie all the information held on the members and beneficiaries who have opted to have a pension paid out of the assets administered by the Régie.

§5. Pension paid out of the assets administered by the Régie

46.16. Administration by the Régie under the provisions of Division III of the Regulation to provide a framework for settlement of the benefits of members and beneficiaries of plans covered by subdivision 4.0.1 of Division II of Chapter XIII of the Supplemental Pension Plans Act and for administration by the Régie des rentes du Québec of certain pensions paid out of the assets of the plans (c. R-15.1, r.3), can encompass all members and

beneficiaries of some or all of the pension plans whose benefits are paid under this Division in the same year, and the assets of those plans that correspond to the portion of the benefits of the members and beneficiaries referred to in the third paragraph of section 46.1. The plans administered collectively are therefore deemed, for such purposes, to constitute a single plan.

46.17. For the purpose of exercising the right to have a pension paid out of the assets administered by the Régie, reduced according to the degree of solvency of the affected component of the pension plan as at 31 December 2012, the following modifications apply:

(1) the time allotted under section 46.3 expires on 1 March 2013;

(2) the date of 31 August referred to in paragraph 1 of the first paragraph of section 46.4 is replaced by 31 October 2012;

(3) the statement of benefits referred to in section 46.5 must be provided by 1 January 2013.”

4. The Regulation is amended by inserting, after section 61, the following:

“**61.1.** As of 30 May 2013, the non-active member of a pension plan who, since at least 1 January 2013, is entitled to a deferred pension, may, notwithstanding section 99 of the Act, request payment of his benefits arising from service prior to 1 January 2011 by means of a transfer under section 98 of the Act. The request for payment shall be submitted to the pension committee no later than 30 August 2012.

The pension committee shall inform the members and beneficiaries referred to in the first paragraph in such a manner that they will have a minimum of 60 days to request that their benefits be paid.”

5. Section 63 of the Regulation is amended by inserting “, with the exception of the provisions of Division VI.1,” in the first paragraph after “the provisions of this Regulation”.

6. This Regulation comes into force on the date of its publication in the *Gazette officielle du Québec*.

However, section 1, insofar as it specifies that the provisions of section 6 of the Regulation respecting supplemental pension plans affected by the arrangement regarding AbitibiBowater Inc. under the Companies’ Creditors Arrangement Act concern the application of this Regulation, has effect from 31 December 2010.