

Regulations and other Acts

Gouvernement du Québec

O.C. 833-2017, 23 August 2017

Supplemental Pension Plans Act
(chapter R-15.1)

Exemption of certain categories of pension plans from the application of provisions of the Act — Amendment

CONCERNING the Regulation to amend the Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act

WHEREAS, under the second paragraph of section 2 of the Supplemental Pension Plans Act (chapter R-15.1), the Government may, by regulation and on the conditions it determines, exempt any pension plan or category of pension plan it designates from the application of all or part of the Act, particularly by reason of the special characteristics of the plan or category or by reason of the complexity of the Act in relation to the number of members in the plan and prescribe special rules applicable to the plan or category;

WHEREAS, under the third paragraph of that section, such a regulation may, if it so provides, have retroactive effect from a date that is prior to the date of its coming into force but not prior to 31 December of the second year preceding the year in which it was published in the *Gazette officielle du Québec* under section 8 of the Regulations Act (chapter R-18.1);

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act, a draft of the Regulation to amend the Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act was published in Part 2 of the *Gazette officielle du Québec* of 12 April 2017 with a notice that it could be made by the Government on the expiry of 45 days following that publication;

WHEREAS it is expedient to make the amended Regulation;

IT IS ORDERED, therefore, on the recommendation of the Minister of Finance:

THAT the Regulation to amend the Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act, attached hereto, be made.

MARC-ANTOINE ADAM,
Associate Secretary General

Regulation to amend the Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act

Supplemental Pension Plans Act
(chapter R-15.1, s. 2, 2nd and 3rd pars.)

1. Section 64.1 of the Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act (chapter R-15.1, r. 7) is amended by adding the following paragraphs:

“However, the third paragraph of section 143, sections 210.1 and 240.3 as well as section 14 of the Regulation respecting supplemental pension plans (chapter R-15.1, r. 6) apply as they read subsequent to 31 December 2015.

The same applies to the first paragraph of section 199.1 of the Act which applies where the employer has not had active members in its employ for 12 months.

For the purposes of the third paragraph of section 143, the summary establishment of the plan’s degree of solvency provided for under section 84 of this Regulation is considered to be the notice in section 119.1 referred to in section 143.”

2. Section 65 is amended:

(1) by replacing paragraph 6 with the following:

“(6) it provides that, for the purpose of respecting taxation rules, surplus assets may be appropriated to the payment of a contribution;”;

(2) by adding the following paragraph:

“(11) it provides that the benefits to be paid are calculated by multiplying their value by the degree of solvency of the plan even where the degree of solvency exceeds 100%.”.

3. Section 69 is amended:

(1) by inserting, after paragraph 5, the following:

(5.1) section 84, by replacing the first paragraph with the following paragraph:

“The additional pension shall be determined on the basis of the actuarial assumptions used in verifying the funding of a plan for the purpose of its most recent actuarial valuation.”;

(2) by inserting, after paragraph 7, the following:

(7.1) section 105, by replacing the first paragraph with the following paragraph:

“The amount of the pension paid under a pension plan governed by this Act and purchased with amounts transferred, even otherwise than under this chapter, shall be determined on the basis of the actuarial assumptions used in verifying the funding of a plan for the purpose of its most recent actuarial valuation.”;

(3) by inserting, after paragraph 9, the following:

(9.1) section 126, by inserting, after each occurrence of “fully funded”, “without taking into consideration the assumption concerning indexation provided for in paragraph 8 of section 69 the Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act (chapter R-15.1, r. 7).”.

4. Section 71 is amended by striking out “and solvent” in subparagraph 3 of subparagraph b of paragraph 6.

5. Section 74 is amended:

(1) by replacing, “section 199” in subparagraph 3 of the second paragraph by “sections 199 and 199.1”;

(2) by adding, after subparagraph 3 of the second paragraph, the following paragraphs:

“(4) the amendment concerns the adjustment of the benefit provided for under section 86 and fully meets the conditions provided for under the plan;

“(5) the amendment does not involve additional obligations for the plan or the appropriation of surplus assets.”.

6. Section 75 is amended:

(1) by striking out, in the third paragraph, “and solvent”;

(2) by replacing, in the fifth paragraph, “first paragraph expressed their opposition in accordance with the third paragraph” by “second paragraph expressed their opposition in accordance with the fourth paragraph”;

(3) by replacing “subparagraph 2 or 3” in the sixth paragraph by “subparagraphs 2 to 5”.

7. Section 76 is amended by replacing, in the first paragraph, “the coming into force of the amendment for which an application for registration is made will not result in an insufficiency of assets in the fund of the plan that would prevent the plan from remaining fully funded and solvent” by “the requested amendment is in accordance with section 85”.

8. Section 78 is replaced by the following:

“**78.** No more than 30 days after the date on which the report on the actuarial valuation is produced, the pension committee shall inform the active members of any ensuing change to the member contribution. To do so, a notice is sent to each accredited association representing members as well as to each member not represented by such an association informing them that the change will take effect without further consultation according to the conditions provided for in the second paragraph of section 80.

However, a plan may provide that the active members can elect to have the pension credit adjusted in lieu of a change to the contribution rate. In such a case, the notice provided for in the first paragraph must indicate that the members must express their opinion on the proposed change to the member contribution and that the pension credit is to be adjusted accordingly for each accredited association or each group of unrepresented members that does not accept the proposal; the rules concerning consultations provided for in section 74 or 75 apply, with the necessary modifications.

The amendments to be made to the plan further to the decision of the active members are made without further consultation.”.

9. Section 79 is replaced by the following:

“**79.** An active member shall, in each fiscal year of the pension plan, pay the member contribution which, added to the employer contribution and the contributions of the other active members, is equal to the sum of the current service contribution determined in accordance with sections 124 and 125 of the Act and any amortization amounts established in application of section 90.”.

10. Section 80 is replaced by the following:

“**80.** The member contribution and the amortization payment are paid in equal instalments, at the frequency provided for under the plan. The instalments may represent an hourly rate or a proportion of the remuneration. The rate or proportion shall be uniform unless it is established using a variable authorized by Retraite Québec.

Where the member contribution is not determined at the beginning of the fiscal year, the member shall continue to pay the contribution fixed for the preceding year. Any variation in the amount of the monthly payments established by an actuarial valuation of the pension plan takes effect as of the first day of the first fiscal year following the one for which the contribution is calculated.”.

11. Section 83 is amended:

- (1) by striking out the first and second paragraphs;
- (2) by replacing the third paragraph with the following:

“Except in the case of plan termination or the withdrawal of an employer party to a multi-employer plan, payment of benefits is calculated as a product of the value of the benefits multiplied by the plan’s degree of solvency in accordance with the third paragraph of section 143 of the Act.”.

12. Section 84 is amended by replacing “paragraph 3” in the second sentence of the second paragraph by “paragraph 1 or 3”.

13. Section 85 is replaced by the following:

“**85.** Except where it has been made mandatory by the application of a new legislative or regulatory provision giving no latitude, a plan amendment that increases the plan’s commitments may not come into force unless the plan remains fully funded in the case of an amendment referred to under section 86 or, in the case of any other amendment, where the plan remains fully funded and solvent, once the commitments resulting from the amendment are taken into account.”.

14. Section 86 of the Regulation is amended:

- (1) by replacing the first paragraph by the following:

“A pension plan may, subject to section 85, be amended so that the pension of each of the members and beneficiaries is adjusted according to the Consumer Price Index for Canada; that adjustment cannot be less than 0% or greater than 4%. The conditions under which such a provision may be applied must be provided for under the plan.”;

- (2) by replacing the fourth paragraph by the following:

“The adjustment to the benefits of the members and beneficiaries that is provided for under the plan must be carried out in its entirety before the surplus assets are used for:

- (1) any amendment increasing the benefits of the members and beneficiaries;
- (2) any allocation of a portion of the surplus to the payment of member contributions.

Where applicable, the plan must remain fully funded and solvent so that the surplus assets may be used for such purposes.”.

15. Section 88 is revoked.

16. Section 90 is amended by replacing the first paragraph by the following:

“The amortization amounts to be paid in connection with an unfunded actuarial liability shall, for each fiscal year or part of a fiscal year of the pension plan included in the amortization period, be allocated subject to the terms and conditions prescribed by the plan text.”.

17. Section 91 is amended by striking out subparagraph 1 of the first paragraph.

18. Section 92 is revoked.

19. Section 93 is amended by replacing “236 and 237” by “210.1, 236 and 237”.

20. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*. However, it has effect from 31 December 2016.