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The Association of Canadian Pension Management

L'Association canadienne des administrateurs de régimes de retraite



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ACPM Submission on Québec Bill 3

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FOREWORD

THE ASSOCIATION OF CANADIAN PENSION MANAGEMENT (ACPM)

ACPM is a national non-profit volunteer-based organization acting as the informed voice of plan sponsors, administrators and their service providers, advocating for improvement to the Canadian retirement income system. Our membership represents over 400 retirement income plans consisting of more than 3 million plan members, with assets under management in excess of \$330 billion.

ACPM believes in the following principles as the basis for its policy development in support of an effective and sustainable Canadian retirement income system:

Diversification through Voluntary / Mandatory and Public / Private Options

Canada's retirement income system should be comprised of an appropriate mix of voluntary Third Pillar and mandatory First and Second Pillar components.

Third Pillar Coverage

Third Pillar retirement income plan coverage should be encouraged and play a meaningful ongoing role in Canada's retirement income system.

Adequacy and Security

The components of Canada's retirement income system should collectively enable Canadians to receive adequate and secure retirement incomes.

Affordability

The components of Canada's retirement income system should be affordable for both employers and employees.

Innovation in Plan Design

Canada's retirement income system should encourage and permit innovation in Third Pillar plan design.

Adaptability

Canada's retirement income system should be able to adapt to changing circumstances without the need for comprehensive legislative change.

Harmonization

Canada's pension legislation should be harmonized.

INTRODUCTION

On June 12th, 2014, the Quebec government introduced Bill 3 – An Act to Foster the Financial Health and Sustainability of Municipal Defined Benefit Pension Plans in Quebec (Bill 3). The Association of Canadian Pension Management (ACPM) wishes to provide its input on the Bill and its potential consequences for pension administrators.

Given the role of ACPM, this submission focuses on the potential impacts of the Bill on the administration of municipal pension plans, and not on the impact on sponsors, employers and participants (except to the extent to which the plan's administration may affect them).

We are not expressing an opinion on the appropriate approach to address the funding of deficits and on whether a part of the deficit should be eliminated through a reduction in accrued benefits.

Furthermore, although administrators have a responsibility in connection with actuarial valuations, we have chosen not to comment on the section of the Bill dealing with actuarial assumptions.

ACPM COMMENTS

The core of our submission can be summarized as follows: given the fact that the restructuring discussions will extend over a period of time but that the final decisions will have to be implemented retroactively to January 1, 2014, pension plan administrators will need clear guidelines from the legislator on how to manage contributions, benefits and member communication in order to reduce uncertainty and possible litigation.

We have grouped our comments in three categories, which represent various types of responsibilities that need to be handled by administrators, primarily by pension committees and indirectly (in most cases) by those to whom the pension committees have delegated or mandated certain responsibilities or tasks:

- 1) Calculation of contributions
- 2) Calculation of members' benefits
- 3) Communication to members

The administrator is responsible, among other things, for ensuring that the proper amount of contributions is paid into the pension fund, for determining the proper amount of benefits that may be payable to plan members (including their beneficiaries, surviving spouses and ex-spouses), and for communicating to members their entitlements and obligations.

We are concerned that administrators will be facing significant challenges during a transition period, until the impacts of changes are fully known. We realize that a transition period is required to implement the changes, as those changes will be subject to negotiations and a possible arbitration process. However, as the Bill stipulates that those changes will take effect retroactively, we request that

the legislator issues regulations prescribing how administrators should proceed during the transition period, in order to avoid confusion between the various stakeholders and potential legal claims from those who may be impacted by the changes.

Here are some examples of each category:

1) Calculation of contributions:

- a. If the current service cost is to be limited to 18% of pay (or 20% for certain categories of employment), where for a given plan the current service based on the latest actuarial valuation is higher than this rate, can the total contributions (from employees and employers) be reduced to the new limit immediately, without knowing which benefits will be reduced at the end of the process?
- b. Bill 3 specifies that both the current service cost and the funding contribution related to future plan deficit are to be shared 50/50 between employees and employers. The bill also specifies that employers are to support the increase, if any, of the employee current service contributions from January 1, 2014 to the date an agreement on restructuring is reached, and that the employer can recover these additional contributions through a contribution holiday. Will the same treatment apply to the portion of employee contributions related to the funding of future deficits? Also, what conditions will apply to the recovery of additional contributions?
- c. If that limit and that cost sharing are not applied immediately, then will the administrator need to make retroactive adjustments to 1.1.2014 once Bill 3 is adopted or once the parties have reached an agreement on restructuring, possibly as a result of arbitration? How would such adjustments need to be applied, especially with respect to plan members who are no longer active by then? Considering the administrative costs and risks related to this, we recommend that rules stipulate that contributions are to be adjusted early on, before the conclusion of the restructuring discussions.
- d. If a plan already has in place certain rules on setting up some type of stabilization fund, the law should be clear on whether those contributions can continue until the restructuring is put into effect, unless the parties agree otherwise.

2) Calculation of members' benefits:

- a. If plan changes resulting from the restructuring are to be effective retroactively to 1.1.2014, how should administrators determine benefits for members who terminate or die and have been paid out between 1.1.2014 and 12.6.2014 (i.e. the date Bill 3 was introduced)? How should administrators determine benefits for members who announce before June 12, 2014 their intent to retire after that date and those of members who terminate, retire or die between 12.6.2014 and the date the plan

changes are adopted? If it is left to the discretion of the administrator, then the law should be clear on whether an administrator may or must retain a portion of the benefit in anticipation of the upcoming changes.

- b. If an administrator calculates benefits without taking into account the yet unknown changes that will result from restructuring, it is not clear at the moment whether the benefits will have to be retroactively reduced when the restructuring process concludes. If this is the case, will the administrator need to revise the benefit amounts as soon as the restructuring amendments are adopted and need to apply that revision retroactively to 1.1.2014? How would the overpayments be treated? Would the administrator need to ask for the excess to be repaid by the member? In the case of members receiving a pension, would the administrator be allowed to recover the excess by reducing future pension payments? In the case of members who terminated and received a transfer value, this would require extensive administrative efforts and costs and there would be a risk that these sums would never be recovered by the plan.
- c. To help avoid the complexities of having to recover eventually an overpayment, it would be useful to have clear regulatory guidelines specifying whether benefit amounts can be withheld by the administrator, to potentially be disbursed once the restructuring concludes. Without such guidelines, the administrator may have no choice but to pay the full benefits as provided in the plan documents. These guidelines should specify which benefit items may be retained and up to what level.
- d. Bill 3 already states that members who submit a retirement request between 1.1.2014 and 12.6.2014 may receive benefits based on the plan rules in effect at their request date, but does this rule apply to members who submitted a request precisely on 12.6.2014? Also, how should administrators interpret what constitutes a “request”, whether it be made before 12.6.2014 or on that date? For instance, does it need to be an irrevocable decision to retire on a given date? What if a member who submitted a request later revises his request, for example to change his desired retirement date? And what if an employee is allowed to revoke it if he becomes disabled before the expected retirement date? And does that expected retirement date need to be within a certain short period, such as 6 months or 24 months?
- e. As future deficits should be funded 50%/50% employer/employees, we believe it would be preferable that any contributions by employees to fund a deficit not be subject to the 50% rule (which could generate additional benefits on termination, and thus dilute the intention of funding the existing deficit). And since excluding only certain employee contributions from the 50% rule would make the administration more complicated, it would be simpler to remove the 50% rule from all contributions, if this is considered acceptable to the legislator or to the parties involved.

- f. If rules are implemented so that benefits may be reduced prior to a restructuring agreement, it would be useful to allow the administrator to suspend the indexation to retirees immediately, in case the plan is to be amended to remove this indexation. The administrator should be allowed to suspend the indexation completely and later make a retroactive adjustment to reflect how the plan is amended (or not), given that it is more feasible for administrators to make catch-up payments than catch-up reductions.
- g. If members request the application of a transfer agreement between pension plans or to benefit from past service buyback provisions of a plan before the conclusion of a restructuring agreement, it may be appropriate to allow plan administrators to delay the treatment of these requests until the conclusion of the restructuring agreement in order to know the plan provisions that will apply as per the transfer agreement or the past service buyback.

3) Communication to Members:

- a. Since the administrator already knows that certain rules will eventually change with a retroactive effect, should he inform members immediately, and what information should be specified? In particular, administrators need to be able to inform those who retire or terminate employment during the transition period, that their benefits can be reduced and/or that some previous payments can be recovered from them by the plan.
- b. We submit that it would very useful for the Régie des rentes to suggest what type of information should be communicated to plan members, in order to avoid that plan members be provided with inconsistent or conflicting messages.

Finally, Bill 3 adds up to many other laws and regulations defining the funding of pension plans. ACPM is concerned with the inherent complexity resulting from the simultaneous application of these pieces of legislation. Such complexity increases even more the risks that plan administrators are incurring in the accomplishment of their responsibilities. The ACPM would strongly encourage the Government of Québec to integrate and consolidate the permanent aspects of these laws and regulations related to funding in order to ease their understanding and uniform application.

ACPM is, of course, available to expand on any if these items as may be helpful to the Legislator.