Legislation matters

STANDARD LIFE

April 2011

1 Pension reform update

In his March 17, 2011 budget, the Quebec Minister of Finance, Raymond Bachand, announced that the Quebec government will be making legislative and regulatory adjustments, allowing the development of new Voluntary Retirement Savings Plans (VRSPs) in Quebec based on the Pooled Registered Pension Plans (PRPPs) framework proposed in December 2010 by the federal government. For more information on PRPPs, please take the time to read our January 2011 issue of *Legislation matters*.

It is understood that a number of VRSP and PRPP provisions are yet to be determined. Moreover, an initial series of national consultations began in February and will end in April. A framework will then be prepared jointly by the provinces and the federal government.

Minister Bachand also tells us consultations will subsequently be conducted by the Quebec government to clarify the features of the VRSP. These consultations will focus on a number of topics, including investment choices and the locking-in of contributions.

With the introduction of the VRSP in Quebec, the Quebec government aims to allow self-employed workers and employees of companies who do not have an employer-sponsored pension plan to increase their retirement savings.

As a result, the VRSP is intended to be a plan that is simple, flexible and accessible to all and which aims to improve investor returns and increase retirement nest eggs at a low cost.

However, before implementing the VRSP, the federal government must first and foremost change its tax laws to:

- No longer require employment of an employee with an employer to contribute to a private pension plan;
- Remove the requirement of a minimum employer contribution (i.e. minimum contribution of 1% of the total compensation for all active members) for a private employee pension plan.

Here are the key elements of the VRSP, as proposed by the Quebec Minister of Finance, Mr. Raymond Bachand:

- A simple and flexible plan accessible to all:

  1. The VRSP will be accessible to all citizens aged 18 and older, whether they are employees, self-employed or savers.

  2. Members will receive a set of default provisions that simplify decisions, particularly on contribution rates and investment choices.

  3. Members will still be able to adapt the plan provisions to their needs.

  4. Contributions to a VRSP can be deducted from income and savings can accumulate tax free as long as they are not withdrawn.

5. The VRSP will also make it easier to transfer assets from one plan to another when, for example, a worker decides to change jobs.

6. Employers will be exempt from the usual administrative procedures related to managing a pension plan. In fact, employers will only have to choose a plan and remit contributions to the administrator of the VRSP.

7. The VRSP will be administered by third parties such as financial institutions.

- A plan that aims to improve saver returns:

1. Each institution authorized to offer the VRSP will have to provide default investment options to encourage members to accumulate a critical mass of assets and lead to a reduction in management costs. One of the main objectives of establishing the VRSP is to reduce management costs through economies of scale.

2. A framework will be implemented for management fees, investment policies and minimum information disclosure requirements.

3. Improved disclosure of information to members will be encouraged by law, particularly with management fees.

- A plan that will increase retirement nest eggs:

1. Employers who do not offer pension plans and who will meet certain yet-to-be-established criteria can automatically enrol employees in a VRSP, allowing them to opt-out if they so desire.

2. Employers who contribute to the plan can require employees to participate in the VRSP, as along as an agreement was established with employees. Any employer contributions will be exempt from payroll taxes (e.g.: QPP and EI). However, employers will not be required to contribute to a VRSP.

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Ontario – Draft regulations on marriage breakdown rules

On March 3, 2011, the Ontario government released draft regulations and a consultation paper in support of changes to family law already adopted by the *Pension Benefits Act* (i.e. Bill 133). The draft regulations provide details regarding the valuation, division and settlement of pension assets upon marriage breakdown, including breakdown of a spousal relationship as they are to be calculated by pension plan administrators.

The Ontario government has invited the public to submit comments by April 18, 2011 at the latest.

The draft regulations stem from the May 14, 2009 adoption of Bill 133, the *Family Law Statute Amendment Act, 2009*.

Bill 133 has no legal effect now, since it is not yet in force. Bill 133 will not be put into force until such time as the required regulatory amendments are ready to be implemented.

When it comes into effect, the main provisions of Bill 133 will have the following significant impacts on pension plans:

- Under the new rules, plan administrators will be required to calculate the pension benefits subject to division and provide the information to the parties involved – something which the current rules do not enforce.
- Parties will be entitled to request a marriage breakdown statement during the separation/divorce proceedings (i.e. before separation or divorce) from the plan administrator as is the case for Quebec.
- Under the current rules, the division of the member's pension benefits can only occur at the date the pension commences to be paid to the member or at the normal retirement date under the pension plan, whichever occurs first. With the new rules, the division will occur immediately upon marriage breakdown.
- If the member's pension benefits have already started to be paid to them from their Defined Benefit pension plan at the time of marriage breakdown, the former spouse will not be entitled to transfer out their share of the member's pension benefits to a LIRA, for example. The member's pension benefits will stay in the plan and the former spouse will instead be entitled to receive his/her share (% or $ amount) of the member's pension from the plan.
- If separation/divorce occurs after the member's retirement under a Defined Benefit pension plan, the former spouse will be entitled to waive their right to the joint and survivor pension at 60%. However, if the former spouse does not waive their entitlement, the former spouse will still be entitled to the joint and survivor pension at 60% of on the member's share.
- Under the current rules, the member's pension benefit entitlement must not be reduced by more than 50% of the value of the pension benefit entitlement accrued during the period of marriage or conjugal relationship. The 50% rule will continue to apply under the new rules.
- The new rules provided under Bill 133 will not apply to marriage or spousal relationship breakdown that occurred before May 14, 2009.

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New CAPSA guidelines

On March 1, 2011, the Canadian Association of Pension Supervisory Authorities (CAPSA) released the following guidelines:

- Guideline no. 5: Guideline on pension fund holder arrangements
- CAPSA consultation on the draft guideline and self-assessment questionnaire on pension plan prudent investment practices, and a draft guideline on pension plan funding policy

Guideline no. 5: Guideline on pension fund holder arrangements

The objectives of this guideline are as follows:

- Expand Guideline no. 4 CAPSA by highlighting the governance principles that apply to pension fund holder arrangements.
- Identify the types of pension fund holder arrangements permitted.
- Discuss the roles and responsibilities of key players, such as employers, plan administrators and pension fund holders.
- Provide stakeholders with information on what the regulatory body seeks when examining fund holder arrangements.

If you are an employer sponsoring a pension plan or a pension plan administrator, it would be important to review this new guideline to identify and clarify the roles and responsibilities of various stakeholders. Although this guideline does not have force of law, it nonetheless represents CAPSA's expectations with regards to different pension plan stakeholders.

Guideline no. 5 is available on the CAPSA website: http://www.capsa-acor.org/en/

CAPSA consultation on the draft guideline and self-assessment questionnaire on pension plan prudent investment practices and a draft guideline on pension plan funding policy

The draft guideline and self-assessment questionnaire on pension plan prudent investment practices aims to help pension plan administrators on how to demonstrate the application of prudence to the investment of pension plan assets.

The draft guideline on pension plan funding policy aims to help with the development and adoption of funding policies. This guidance specifically applies to Defined Benefit pension plans. A funding policy establishes the framework for the financing of a Defined Benefit pension plan, including factors that apply to the plan and the sponsor (such as benefit security, plan investment policy and duration of the pension promises).

These draft guidelines are part of the CAPSA strategic initiative, which aims to promote a consistent approach in the governance of pension funds and funding.

CAPSA has carried out this priority through the following:

- Examining issues related to the application of the prudent person rule, taking into account both the assets and liabilities of pension plans.
- Establishing a common approach to funding policies, recognizing that there is a link with the governance of the fund.

These draft guidelines are available at http://www.capsa-acor.org/en/

Key stakeholders are invited to submit comments on these draft guidelines and the self-assessment questionnaire to CAPSA by June 1, 2011.

You can contact us

Your feedback is important to us. If you have any comments about our publication, or if you would like us to address a particular issue or subject in a subsequent edition, please feel free to drop us a line at the following address: **legislation.matters@standardlife.ca**

www.standardlife.ca

The Standard Life Assurance Company of Canada
Standard Life Assurance Limited

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