MERCER

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COMMUNIQUÉ

QUÉBEC ADOPTS THE VOLUNTARY RETIREMENT SAVINGS PLANS ACT

The *Voluntary Retirement Savings Plans Act* (the Act) was adopted by the Québec National Assembly on 3 December 2013. The Act establishes the Voluntary Retirement Savings Plan (VRSP), a type of retirement plan that is accessible to all individuals. While the Act sets out the rules governing how VRSPs function as well as the obligations of the parties involved, greater details will be provided in the regulations that are to come. Furthermore, VRSPs are subject to the federal tax rules that apply to pooled registered pension plans (PRPPs), which took effect on 14 December 2012, particularly the rules governing contribution limits.

Our *Communiqué* of 21 May 2013 discussed the version of the Bill that had been tabled on 8 May 2013, to which many changes were subsequently made, particularly around the application dates. This *Communiqué* summarizes the main provisions relating to VRSPs following adoption of the Act.

Application Date and Highlights of VRSPs

Eligibility

Beginning 1 July 2014, any employer having an establishment in Québec and that operates in a provincially regulated sector will have the option of offering a VRSP to its employees. However, as explained below, certain employers, because of the number of eligible employees they have, will eventually be required to offer a VRSP to certain employees.

An “eligible employee” refers to an employee, within the meaning of the *Act respecting labour standards*, who is at least 18 years of age and has at least one year of uninterrupted service as defined under that act. While, in principle, an eligible employee must work in Québec, it is possible that under certain circumstances an employee who works outside Québec would be considered an eligible employee under the Act.

Employers that, on 30 June 2016, have 20 eligible employees or more will be required to subscribe to a VRSP on or before 31 December 2016 and automatically enrol in the plan any eligible employees to whom they do not offer:

- a group registered retirement savings plan (RRSP) or a group tax-free savings account (TFSA), to which those employees can make contributions through payroll deductions; or
- a registered pension plan (RPP) as defined under the *Income Tax Act*.

The same rule will apply to employers that, on 30 June 2017, have from 10 to 19 eligible employees. Those employers will be required to subscribe to a VRSP on or before 31 December 2017. Finally, the date on which employers with five to nine eligible employees will be required to comply with the Act will be determined by the government and cannot be earlier than 1 January 2018.

The Act is unclear concerning the exemption related to group RRSP, group TFSA and RPP. However, it is likely that the Act will be amended to make it clear that if the employer offers to all eligible employees a group RRSP, a group TFSA, or an RPP, then the employer is not required to offer a VRSP.

An employer that is required to subscribe to a VRSP can be exempted from this obligation if the employer enters into an agreement, containing the information prescribed by regulation, with a professional order, an association or another group, which allows the employer's employees to become members of the VRSP subscribed to by the group through a VRSP administrator. In such a case, the administrator and the employer will be subject to the same rights and obligations stipulated by the Act as they would be if the employer had subscribed to the VRSP.

Compliance with the obligation to subscribe to a VRSP will be supervised by the Commission des normes du travail.

Contributions

Employers may contribute, but will not be required to contribute, to the VRSP.

Employees who are automatically enrolled in a VRSP will be able to opt out or, if they choose to participate in the plan, to reduce or stop their contributions.
The member's default contribution rate will be determined by regulation. In its 8 May communiqué announcing the introduction of the Bill, the Québec government had indicated that the default rate would be 2% when the plan took effect, and would gradually increase over the following years. Based on what was announced in 2012, the rate could reach 4%; however, nothing has been confirmed yet in this matter.

Investment Options

The investment offering is the responsibility of the VRSP administrator.

Contributions will automatically be invested in the default investment option that meets the criteria determined by regulation, unless the member makes another choice from the three to five other investment options that must be offered. It is expected that the default option will be based on a "life cycle" approach in which the risk level is adjusted based on the member's age.

Also, the three to five other investment options that must be offered to members will need to reflect varying degrees of risk and expected return that would allow a prudent individual to create an appropriate investment portfolio. The options will also have to be determined in accordance with the criteria stipulated in the Act. Furthermore, all investments must be permitted under tax rules.

Access to funds

Employer contributions on behalf of an employee are credited to the employee's locked-in account whereas the employee's contributions are credited to his or her not locked-in account. Employees must be given access to their not locked-in account at least once every 12 months. Funds in the locked-in account may be withdrawn only in cases stipulated by the Act or by regulation. For example, funds may be withdrawn if the member's life expectancy is reduced due to physical or mental disability or if, in the member's employment termination year, the balance of his or her account is less than 20% of the YMPE, established in accordance with the *Act respecting the Québec Pension Plan*, subject to any other percentage and conditions set by regulation.

In the event of the member's death, his or her spouse, as defined in the Act, will have priority for receiving the value of the benefits payable by the plan, unless the spouse has waived entitlement to the benefit. VRSP assets are part of the family patrimony and, upon breakdown of a conjugal relationship, could be subject to partition between the member and his or her spouse. Contributions remitted or that must be remitted to the VRSP, along with accrued interest, are unassignable and unseizable. Refunds and benefits paid from a VRSP are also unassignable and unseizable, as are amounts transferred from locked-in accounts to pension plans prescribed by regulation, and any refunds of such amounts.

VRSP Administrators

VRSP administrators will be restricted to insurance companies, trust companies and investment fund managers that have been duly authorized to act in this capacity by the Autorité des marchés financiers. An administrator will be permitted to register only one VRSP with the Régie des rentes (the Régie). However, beginning on a date that will be set by the government, and which cannot be earlier than 1 January 2018, an administrator will be able to offer more than one VRSP. The conditions of the plan offered by the administrator must be the same for everyone. The plan must be offered at a low cost, based on the criteria determined by regulation. The administrator may not refuse an employer's application to subscribe to the plan or an employee's application to join, unless authorized to do so by regulation.

The administrator is required to provide the employer who has subscribed to a VRSP with a copy of the contract and, upon request, the annual statement submitted to the Régie as well as the financial report required by the Act. The administrator must, among other things, provide the members with a plan summary as well as an annual statement.

Employer Obligations

An employer that is required to offer a VRSP must first choose one that is suitable to its needs among those proposed by the authorized administrators. The employer's other main obligations are to:

- Inform all employees in writing, at least 30 days before subscribing to a VRSP, of a number of related details, including the following:
  - Eligible employees will automatically be enrolled in the VRSP, with an opportunity to opt out;
  - VRSP members will be able to determine the amount they contribute to the plan; and
- The amount of the employer's contribution, if applicable;
- Collect the members' contributions from their salary and remit those amounts to the plan;
- Provide the administrator with the documents and information the administrator requires to comply with the Act, and inform the administrator of any termination of employment;

- Enrol in the plan all employees who become eligible and all other employees who make a request to join the plan, unless the employer offers those employees a group RRSP or group TFSA to which they can make contributions through payroll deductions, or an RPP;
- Offer any eligible employee who had opted out of the VRSP the opportunity to join the plan and offer any employee who had chosen a contribution rate of 0% the opportunity to resume contributions to the plan. The employer must do so in the month of December, every two years following the date the employee had opted out of the plan or had chosen a contribution rate of 0%.

Members' Rights

The Act provides, among other things, that a member may:

- Set his or her contribution rate. An employee who is a member of a plan offered by his or her employer can change his or her contribution rate not more than twice per 12-month period, unless allowed to do so more often by the employer. The member can also set his or her contribution rate at 0%, according to the conditions that will be determined by regulation. If a member fails to set a contribution rate, the default rate applies;
- If automatically enrolled in the plan, opt out within 60 days after the date the notice of his or her enrolment has been sent;
- Select his or her investment options;
- Withdraw all or a portion of the funds in his or her not locked-in account or direct a transfer of those funds to a prescribed vehicle of his or her choice (this option must be provided at least once per year);
- At termination of employment or upon reaching age 55, transfer all or a portion of his or her locked-in account to a prescribed vehicle of his or her choice; and
- When permitted by the plan, and subject to certain conditions, choose to receive variable payments from his or her accounts if he or she has attained age 55. In the event of the member's death, this option may also be available to the spouse.

Comment

We are in favor of this new retirement savings option. However, we believe that employers should have been given the choice whether or not to offer this type of plan rather than being required to do so. Even though their responsibilities with respect to VRSPs are limited, employers will still have to assume some of the related administrative duties, such as selecting a plan and managing employee contributions. For small businesses, these tasks can be significant. It is also possible that administrators will offer only limited services, which would leave employers and members having to make up for the possible shortfall through their own means.

Furthermore, we still do not know what fees the VRSP administrators will actually apply. If they are higher than the fees that currently apply in the market for similar products, the chances of this new option succeeding will be weakened.

Employers that offer an RPP or a group RRSP or group TFSA to the large majority of their employees may want to revise the eligibility criteria to ensure that all of their eligible employees will have access to the plans offered. This would exempt those employers from the obligation of having to offer a VRSP (assuming that the Act will be amended to clarify this exemption). On the other hand, employers that already offer a group RRSP or group TFSA may be interested in replacing it with a VRSP if the VRSP fees are more competitive and if certain administrative tasks are lighter for the employer, and in light of the fact that payroll taxes will not apply to any

employer contributions made to a VRSP. Once administrators have launched their products, employers may want to compare their current plan with the new VRSP.

Finally, the VRSP is different from the PRPPs that apply to federally regulated employees and from the PRPPs that have been proposed in other provinces. To allow for uniformity in how VRSPs apply to employers that have eligible employees in different jurisdictions, and to take into account the mobility of members, it would be desirable for VRSPs and other PRPPs to be harmonized.

For more information, contact your Mercer consultant or the following Mercer consultants:

Doris Legendre
514 841 6790
doris.legendre@mercer.com

Karine Bellavance
514 841 2718
karine.bellavance@mercer.com

André Jr. Landry
514 841 7580
andre.landry@mercer.com

Mercer Offices:

Calgary
403 269 4945

Edmonton
780 483 5288

Halifax
902 429 7050

London
519 672 9310

Montréal
514 285 1802

Ottawa
613 230 9348

Québec City
418 658 3435

Regina
306 791 4558

Saskatoon
306 683 6950

Toronto
416 868 2000

Vancouver
604 683 6761

Winnipeg
204 947 0055

Mercer Website: **www.mercer.ca**