MERCER

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COMMUNIQUÉ

BILL 39 – VOLUNTARY RETIREMENT SAVINGS PLANS ACT

The Quebec government tabled Bill 39, the *Voluntary Retirement Savings Plans Act* (the Bill), in the National Assembly on 8 May 2013. A similar bill had been introduced by the previous government in June 2012. Our Communiqué of 26 June 2012 discusses that bill.

In its report published last 17 April, the Expert Committee on the Future of the Quebec Retirement System (the Expert Committee) recommended that the Government quickly put in place voluntary retirement savings plans (VRSP). With the Bill, it appears that the Government is acting on that recommendation.

If adopted, the Bill will take effect on 1 January 2014. Employers who are affected will have to offer a VRSP to their employees by no later than 1 January 2016.

This Bill establishes a new type of low-cost retirement plan that will be accessible to all individuals (salaried employees and self-employed workers). VRSPs are subject to most of the federal tax rules that took effect on 14 December 2012. While the Bill provides a general description of how VRSPs function and what the obligations of the parties involved are, greater details will be provided in the regulations to come.

This *Communiqué* summarizes the main rules relating to VRSPs. More specifically, however, it is worth noting that the Government has followed the Expert Committee's recommendation to exempt employers that offer a group tax-free savings account (TFSA) from the obligation to offer a VRSP, just as it is provided for employers that offer a group registered retirement savings plan (RRSP) or a registered pension plan (RPP).

Highlights of the VRSP

Any employer with an establishment in Quebec and operating in a provincially regulated sector may choose to offer a VRSP to its employees. However, implementation of this type of plan is mandatory where, at the end of the calendar year, such an employer:

- Has at least five salaried employees (within the meaning of the term in the *Act respecting labour standards*) with at least one year of uninterrupted service; and
- Does not offer them an RRSP or a TFSA for which payroll deductions could be made, nor an RPP.

An employee has the right to waive membership in the plan and, if the employee participates, to reduce or discontinue his or her contributions. Application of the requirement to implement a VRSP will be monitored by the Commission des normes du travail.

Employers will not be required to contribute. The member's default contribution rate will be determined by regulation. In its 8 May communiqué announcing the introduction of the Bill, the Quebec government indicated that the rate will be 2% when the plan takes effect, and will increase gradually over the following years. Based on what was announced in 2012, the rate could climb to 4%; however, nothing has been confirmed in this matter.

Contributions are automatically invested in the default investment option meeting the prescribed criteria, unless the member makes another choice where several investment options are 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. The investment options that can be offered must reflect various risk and return levels that would allow a prudent individual to create an appropriate portfolio.

Employer contributions on behalf of a member are credited to the member’s locked-in account whereas member contributions are credited to the member’s non-locked-in account. Employees must be given access to their non-locked-in account at least once every 12-months. However, funds may be withdrawn from the locked-in account only if the member’s life expectancy is reduced, if, for the employment termination year, there is a small balance that is less than 20% of the maximum pensionable earnings, as established by the *Act respecting the Québec Pension Plan*, or if the member has not resided in Canada for at least two years.

As is the case for death benefits payable from RPPs, the member’s spouse, as defined in the Bill, will have priority for receiving the value of the member’s account, unless the spouse has waived his or her entitlement to the benefit. The rule that applies when the member chooses to receive variable benefits from the VRSP will be determined by regulation. The VRSP assets are part of the family patrimony and, upon breakdown of a conjugal relationship, could be subject to a partition between the member and his or her spouse.

Finally, the contributions remitted (or to be remitted) to the VRSP with accrued interest are unassignable and unseizable. Refunds from a VRSP as well as benefits paid thereunder are also unassignable and unseizable, as are amounts transferred from locked-in accounts to prescribed pension plans, and any refunds of such amounts.

Administrator of the VRSP

VRSP administrators will be restricted to insurance companies, trust companies and investment fund managers that have been duly authorized by the Autorité des marchés financiers (the AMF). The administrator will be able to register only one VRSP with the Régie des rentes (the Régie). The administrator must offer a plan with the same conditions to everyone (employers and employees, as well as self-employed individuals). The plan must be offered at a low cost, based on the low-cost criteria prescribed by regulation. The administrator cannot refuse the request of an employer or an individual to participate in the plan unless authorized to do so by law.

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 information return and the financial report submitted to the Régie. The administrator must, among other things, provide the members with a plan summary as well as an annual statement. The administrator may not give, offer or agree to give or offer to an employer any inducement to enter into a VRSP contract with the administrator; an employer may not demand, accept or agree to accept from the administrator such an inducement, nor offer or agree to offer a plan administrator any inducement.

Employer Obligations

An employer obligated to offer a VRSP must first choose a suitable VRSP from among the VRSPs offered by the authorized administrators. The employer's other main obligations are to:

- A least 30 days before subscribing to the VRSP, notify all employees in writing:
  - That it intends to subscribe to the VRSP;
  - That eligible employees will automatically be enrolled, with an opportunity to opt out of the plan;
  - That VRSP members will be able to set their own contribution rate for the plan;
  - Of the amount of the employer contribution, if applicable; and
  - That employees who will not be automatically enrolled in the VRSP must inform the employer if they wish to participate in the plan;
- Make source deductions for member contributions and remit the contributions to the administrator;
- Provide the administrator with the documents and information the administrator requires to comply with the law, and inform the administrator of any discontinuance of contributions or termination of employment;
- Automatically enrol any employee who becomes eligible and enrol any other employee who requests to participate;
- Offer the plan to any eligible employee who has opted out of the plan or discontinued making contributions; the employer must do so in the month of December following the year in which the employee opted out or discontinued making contributions;
- Provide members with access, free of charge, to the contract with the insurer, the annual information return and the financial report.

Rights of Members

The Bill provides that a member may:

- Select a contribution rate with the option to change it not more than twice per 12-month period, unless allowed to do so more often by the employer. If a member fails to select a contribution rate, the default rate applies;
- If automatically enrolled as an eligible employee, opt out of participation within 60 days of having been notified of his or her enrolment in the plan;
- Discontinue contributing to the plan at any time (with no option to resume contributions within the following 12-month period, unless allowed to do so by the employer);
- Select investment options when a choice is offered;
- Withdraw all or a portion of the funds in his or her non-locked-in account or direct a transfer of those funds to a prescribed vehicle of his or her choice (this option must be permitted at least once per 12-month period);
- At termination of employment or upon attainment of age 55, transfer all or a portion of his or her locked-in account to a prescribed vehicle of his or her choice; and
- Where 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. This option may also be available to the spouse following the member's death.

Comment

We support this new type of retirement plan as it may be offered at a low cost. However, we believe that employers should have been given the option to provide it rather than being required to do so. We also find that the threshold of five employees to require the introduction of a plan is too low and should be increased. 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 processing employee contributions. These tasks can be significant for a small business.

VRSP fees are still unknown. However, since the fees are expected to be low, the services offered by administrators to employers and members will probably be limited. Employers and members may need to make up for this possible shortfall through their own means.

Employers already offering an RRSP or a TFSA may be interested in replacing it with a VRSP if it offers more competitive fees and lightens some of the administrative responsibilities, particularly since employer contributions to VRSPs will not attract payroll taxes. Employers may therefore want to compare their plan with the new VRSP once the Bill has been adopted and the administrators have launched their products.

It would have been desirable to have harmonized the VRSPs with the pooled registered pension plans (PRPPs) that apply to federally regulated employees and the PRPPs that could be adopted in other provinces, so that employers with employees in several jurisdictions could have been able to apply the plans in a uniform manner and so that the mobility of plan members could have been taken into account. The federal PRPP and the Quebec VRSP differ in many respects.

In Ontario, the provincial government announced in its 2013 budget its intention to hold consultations on the adoption of rules relating to PRPPs. Emphasis will be placed on keeping costs low and adequate member protection.

Other provinces, such as Alberta, Saskatchewan and British Columbia, are working toward introducing similar plans.

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