Willis Towers Watson

Client Advisory

Québec Bill 68 will allow target benefit pension plans and make other legislative changes

October 27, 2020

Summary

On October 7, 2020, the Québec government tabled Bill 68, *An Act mainly to allow the establishment of target benefit pension plans*, in order to allow employers in Québec to establish target benefit pension plans (TBPPs) and to make other amendments to rules related to pension plans, Voluntary Retirement Savings Plans and the Québec Pension Plan.

TBPPs are already allowed in a few Canadian provinces. In Québec, the TBPP design would be available to Québec members of new and certain existing private sector pension plans, as well as pension plans sponsored by municipalities or universities. The main rules respecting TBPPs are provided under Bill 68 and will be completed in forthcoming regulations.

This Advisory will be of interest to sponsors of pension plans who are considering plan design changes to share costs and risks with plan members.

On October 7, 2020, the Québec government tabled Bill 68, *An Act mainly to allow the establishment of target benefit pension plans*, in order to allow employers in Québec to establish target benefit pension plans (TBPPs) and to make other amendments to the *Supplemental Pension Plans Act* (SPPA), the *Act respecting the Québec Pension Plan*, and the *Voluntary Retirement Savings Plans Act*. This Advisory highlights the main characteristics of TBPPs, and amendments made with respect to other topics of interest for pension plan sponsors and employers. If you are interested only in the measures potentially affecting other plans (DB, DC or hybrid plans), please go to page 4.

Background

Generally, TBPPs offer a compromise between DC plans, where the investment and longevity risks are fully borne by plan members, and DB plans, where investment and longevity risks are borne by the employer. A TBPP is essentially a type of career average defined benefit pension plan where the employer's responsibility is limited to a fixed contribution and the employees bear the longevity, investment and other financial risks. Accrued benefits can be reduced when the TBPP has a deficit

or when contributions are insufficient to fully fund them (rules to be specified in the plan text), but TBPPs guarantee the payment of a pension until death through risk pooling. Up to now, only Alberta, British Columbia, New Brunswick and Nova Scotia allow for the establishment of TBPPs (sometimes under different names). Although Ontario passed legislation to allow TBPPs, it is not yet in effect.

Plan design of TBPPs under Bill 68

If Bill 68 is passed in its current form, employers will be able to establish new TBPPs either as single-employer plans or multi-employer plans, for unionized or non-unionized employees, starting on the date Bill 68 is assented to (which would be close to the date it is adopted by the National Assembly).

TBPPs will be allowed in respect of Québec members. TBPPs with members outside Québec will only be allowed to the extent determined by regulation. The content of such regulatory provisions is unknown at this point.

TBPPs will be allowed to contain both target benefit and DC provisions. However, they will not be allowed to have both target benefit and DB provisions. In addition, a TBPP cannot be an insured plan (i.e., a plan where all benefits are guaranteed by an insurer), a floor plan (i.e., a DC plan with a minimum DB pension), or an individual pension plan as defined under the federal *Income Tax Act*.

TBPPs will be subject to the provisions of the Québec SPPA, with certain adjustments, and the main characteristics will be as follows:

- Plan liabilities are assumed by plan members and beneficiaries
- Employer contribution is limited to the one provided by the plan
- Plan determines the benefit target (corresponding to the normal pension and other benefits) to be used to determine current service contributions
- Normal pension and other benefits under the plan can be reduced where contributions are insufficient to fully fund them
- Only members and beneficiaries are entitled to surplus assets (subject to tax rules)
- Plan cannot be amended or terminated, directly or indirectly, unilaterally by the employer(s) participating in the plan
- Benefits under a TBPP are not subject to the 50% rule (i.e., member contributions do not have to be lower than 50% of the value of benefits under the plan)
- Where the commuted value of a benefit (excluding additional voluntary contributions and DC type contributions) is paid to a member, it must be transferred or paid in proportion to the solvency ratio of the plan

TBPPs will be prohibited from:

- Using final average or best average earnings to calculate the members' pension. In other words, TBPPs will be career average plans or flat dollar plans

- Providing for post-retirement indexation
- Providing for early retirement benefits that depend on the member's years of employment or credited service (e.g., bridge benefit or early retirement subsidy)
- Entering into transfer agreements with other pension plans
- Providing for benefits that are conditional upon plan termination, and
- Holding buy-in annuity contracts as plan assets. However, TBPPs will be permitted to purchase buy-out annuity contracts

Funding Rules for TBPPs

TBPPs will be subject to the following funding rules:

- Complete actuarial valuations will need to be performed as at the end of a calendar year (except for buy-out annuity purchases and plan amendments that have an impact on plan funding) and be filed with Retraite Québec within six months after the valuation date, at the same frequency as regular DB plans (triennial, unless the funded ratio is less than 90% where the valuation would be performed annually)
- Going-concern deficits are permitted and would have to be funded over five years. Monthly amortization payments can be based on an hourly rate or a rate of the remuneration for active members
- The stabilization provision deficit does not have to be funded
- TBPPs cannot have an improvement deficit. Where a plan amendment improves benefits, a special payment equal to the value of the additional benefits (adjusted with respect to the stabilization provision target level) must be paid in full as of the valuation date
- Member contribution holidays and benefit improvements while the plan is ongoing will be allowed provided certain conditions are met

Recovery measures and restoration of benefits

The following rules will apply with respect to recovery measures and restoration of benefits:

- The recovery measures that apply where contributions are insufficient to fund benefits as well as conditions for restoring benefits must be set out in the plan text
- The pension committee cannot have any discretion in respect of the recovery measures, as to applicable measures, the order in which measures are to be applied, or how they will be distributed between active and inactive members. The same principles apply for the restoration of benefits
- Where contributions are insufficient to fund benefits, as at the date of an actuarial valuation, the pension committee must apply the recovery measures set out in the plan text

- Recovery measures include:
  - an increase in member contributions
  - an increase in employer contributions (subject to the limits set out in the plan text)
  - a reduction in the benefit target (if the insufficiency is related to future service), and
  - a reduction in accrued benefits (if the insufficiency is related to past service)
- Any benefit reduction can apply to pension benefits already in payment, but does not have a retroactive effect on amounts or benefits already paid. Also, inactive members' benefits cannot be reduced in a greater proportion than the active members' benefits (on a going concern basis)
- Benefits that have been reduced can be restored, if a later actuarial valuation shows, on a going concern basis, that plan assets are at least equal to plan liabilities increased by the value of the stabilization provision target level
- The effective date of the recovery measures or restoration of benefits must be between the day following the date of the relevant actuarial valuation and one year following that day

TBPPs for municipalities, universities and certain pulp and paper sector businesses

Special rules are provided under Bill 68 with respect to TBPPs that will be sponsored by municipalities or universities.

Bill 68 also mentions that certain TBPPs previously allowed in the pulp and paper sector must comply with the TBPP provisions of the SPPA no later than December 31, 2023.

Conversion of existing plans

Existing DB plans cannot be converted into a TBPP (except for negotiated contribution plans).

Bill 68 also grants Retraite Québec the authority to provide, by regulation, rules for converting TBPPs into other types of pension plans or DC plans into TBPPs.

Changes to the SPPA affecting DB, DC or hybrid pension plans

Variable payment life pensions

Bill 68 proposes to allow DC plans to offer variable payment life pensions (VPLPs). A plan member can use all or part of their DC account to obtain a life pension which could vary each year, and which would be paid from a variable payment life pension fund (VPLPF). Based on the 2019 federal budget, VPLPs would provide payments that vary based on the investment performance of the underlying VPLPF and on the mortality experience of VPLP annuitants. Conditions related to VPLPs and VPLPFs will be prescribed by regulation, whose content is unknown at this time. Similar measures are proposed for Voluntary Retirement Savings Plans (VRSPs).

Payments of commuted values adjusted based on the solvency ratio – More frequent solvency ratio permitted

Currently, the SPPA provides that the solvency ratio used to adjust the amount payable from a plan is based on the latest actuarial valuation report, or financial notice, whichever is most recent on the date of calculation. Bill 68 proposes to allow the determination of the applicable solvency ratio at intervals shorter than one year. The plan text would have to be amended to specify the frequency of the solvency ratio determination.

Quantification of risks no longer required in pension committee internal by-laws

Bill 68 would amend the rules respecting the content of the pension committee internal by-laws to remove the requirement that measures to quantify the risks related to the plan be included.

Withdrawal of an employer from a multi-employer pension plan

Where an employer withdraws from a multi-employer pension plan and all the entitlements of members and beneficiaries related to such employer are DC only, the amendment does not require the approval of Retraite Québec. Where the plan so provides, the benefits of the members and beneficiaries affected by the withdrawal can be maintained in the plan.

Conditions applicable to plan mergers

Bill 68 would modify the SPPA provisions related to plan mergers to specify that the solvency ratio test must be met in all cases. The possibility to consult plan members applies only with respect to the plan surplus provisions.

Comment

New rules about TBPPs will be a welcome development for employers that have operations in Québec, as TBPPs will provide them with an additional option in terms of the retirement plans they can offer their employees, allowing the risk to be shared in a different manner than under DB or DC plans. TBPPs will likely be available for plans registered in Québec, whether they include members in Québec only or in other provinces as well. It will also be possible to convert certain existing plans into TBPPs subject to a consultation process with members and beneficiaries in certain circumstances.

In addition, Bill 68 will provide another decumulation option for DC plans, in the form of variable payment life pensions.

For more information

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