



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-NINTH LEGISLATURE

Bill 80

An Act respecting voluntary retirement savings plans

Introduction

**Introduced by
Madam Julie Boulet
Minister of Employment and Social Solidarity**

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EXPLANATORY NOTES

This bill establishes a type of low-cost retirement plan called a “voluntary retirement savings plan” that is accessible, to the extent that tax rules allow it, to all individuals, including self-employed workers and workers whose employer has not subscribed to such a plan. It follows up on a measure announced in the budget speeches of 17 March 2011 and 20 March 2012.

Voluntary retirement savings plans are to be administered by insurers, trust companies or investment fund managers. The latter must hold a licence for that purpose, issued by the Autorité des marchés financiers. The plans must be registered with the Régie des rentes du Québec.

Without any obligation to do so, any individual may contribute to a voluntary retirement savings plan, as may any employer on behalf of the employees. However, employers having five eligible employees or more who are credited with one year of uninterrupted service within the meaning of the Act respecting labour standards and who do not have a registered retirement savings plan or a registered pension plan for which payroll deductions could be made must automatically register those employees in a plan. Such employees, however, have the right to renounce membership in the plan.

Each plan member may determine his or her own rate of contribution to the plan. Where the administrator offers investment options in addition to the default investment option, a plan member may also determine the investment option that will apply in his or her case. The member may terminate his or her membership in the plan at any time or, under certain conditions, set his or her rate of contribution at 0%.

The other terms and conditions that apply to the establishment and administration of these voluntary plans are established and the functions and powers conferred on the Régie des rentes du Québec, the Autorité des marchés financiers and the Commission des normes du travail are specified.

LEGISLATION AMENDED BY THIS BILL:

- Civil Code of Québec;
- Act respecting the Autorité des marchés financiers (R.S.Q., chapter A-33.2);
- Act respecting administrative justice (R.S.Q., chapter J-3);
- Act respecting labour standards (R.S.Q., chapter N-1.1).

Bill 80

AN ACT RESPECTING VOLUNTARY RETIREMENT SAVINGS PLANS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

PURPOSE AND APPLICATION

1. This Act establishes a type of low-cost retirement plan called a “voluntary retirement savings plan” in order to promote retirement savings, and provides a legal framework for the establishment and administration of such plans.

2. Individuals may become members of a voluntary retirement savings plan to the extent that they are allowed to contribute to a registered retirement savings plan under the fiscal rules provided by the Income Tax Act (Revised Statutes of Canada, 1985, chapter 1, 5th Supplement), even individuals who are self-employed workers or whose employers have not subscribed to a voluntary retirement savings plan.

Employers may contribute to a voluntary retirement savings plan on behalf of their employees to the extent that the latter are members of the plan.

CHAPTER II

REGISTRATION OF THE PLAN

3. A voluntary retirement savings plan must be registered with the Régie des rentes du Québec, in the manner prescribed by regulation. The same applies to each of its amendments of a type provided for by regulation.

An administrator that files an application for registration must file the following with the Régie:

(1) the text of the plan and its amendments, or a copy of those documents certified by the administrator;

(2) a copy of the administrator’s licence issued by the Autorité des marchés financiers;

(3) a declaration, signed by the administrator, that the plan and its amendments comply with this Act;

- (4) any document or information determined by regulation; and
- (5) the fees prescribed by regulation.

4. The text of the plan must be in the form of a single, complete document and include the information determined by regulation.

5. The Régie sends a plan administrator whose application for registration meets the requirements prescribed by this Act an acknowledgment of receipt showing the date of receipt of the application.

If the application for registration is incomplete, the Régie notifies the administrator, and specifies the information which remains to be filed.

6. The Régie may, after giving a plan administrator an opportunity to submit observations, refuse to register the plan, or part of the plan, or an amendment that, in its opinion, is not in conformity with this Act. It informs the administrator by means of a written notice specifying the reasons for its refusal.

7. Upon registering a plan or an amendment, the Régie notifies the plan administrator. The Régie assigns a number to each plan it registers.

8. A plan and its amendments become effective on the date they are registered with the Régie and may not become effective before that date.

No member may be accepted in the plan before the plan is registered.

9. The registration of a plan or of an amendment does not constitute proof of its conformity with this Act.

10. The Régie may, after giving a plan administrator an opportunity to submit observations, revoke the registration of any part of the plan or of an amendment that is not in conformity with this Act.

The Régie notifies the plan administrator of any revocation of registration by means of a written notice specifying the reasons for the revocation.

11. Only one voluntary retirement savings plan per administrator may be registered with the Régie.

12. A provision of a voluntary retirement savings plan that is incompatible with this Act is without effect.

CHAPTER III

ADMINISTRATION OF THE PLAN

DIVISION I

ADMINISTRATOR

§1. — *Obligations*

13. The administrator of a voluntary retirement savings plan must hold a licence issued for that purpose by the Autorité des marchés financiers.

Only the following legal persons may act as administrator of a voluntary retirement savings plan:

(1) insurers holding a life insurance class licence issued under the Act respecting insurance (R.S.Q., chapter A-32) in conformity with the Regulation under the Act respecting insurance (R.R.Q., chapter A-32, r. 1);

(2) trust companies holding a licence issued under the Act respecting trust companies and savings companies (R.S.Q., chapter S-29.01); and

(3) investment fund managers registered under Title V of the Securities Act (R.S.Q., chapter V-1.1).

14. The administrator manages the plan and its assets as administrator of the property of another and, as such, exercises the prudence, diligence and skill that a reasonable person would exercise in similar circumstances. The administrator must also act with honesty and fairness in the best interest of the members.

15. The administrator is responsible for ensuring that the plan it manages is in compliance with this Act.

16. The contract between the administrator and the employer or the member, as the case may be, must be in conformity with the plan previously registered with the Régie and contain, in addition to the information prescribed by regulation, the registration number assigned by the Régie.

17. Within 30 days after the contract is signed, the administrator provides members whose employer has subscribed to a plan with a written summary of the plan. The summary must describe, in particular, the rights and obligations of the members and the employer. It must also include the investment options available under the contract and the costs related to the plan.

The administrator must also provide the summary to any employee referred to in section 37, within the time limit provided for in the fourth paragraph of that section.

18. The administrator may not refuse the application of an employer to participate in the plan or of an individual to become a member of the plan unless authorized to do so by an Act or regulation.

19. The administrator must provide a plan at the same cost and on the same conditions to all employers who participate in the plan and to all individuals who become members of the plan.

20. Subject to the regulations, an administrator may not give, offer or agree to give or offer to an employer an inducement to enter into a contract with the administrator in respect of a voluntary retirement savings plan.

21. The administrator must, within six months after the end of each fiscal year of the plan or, in the case of the first fiscal year of the plan, within any additional period granted by the Régie, transmit to the Régie an annual statement drawn up on the form it provides, along with the certificates and documents mentioned in the form. The annual statement must be accompanied by the fees prescribed by regulation.

The administrator must cause to be prepared, within the same time, a financial report containing a statement of the plan's assets and a statement of revenues and expenditures for the fiscal year just ended. The report must be audited by an accountant, except in the cases prescribed by regulation.

For the purposes of this section, "accountant" means any person who, being a member of the Ordre des comptables professionnels agréés du Québec, is authorized under the Act constituting the order to act as an accountant for the purposes of this section.

22. The administrator must provide a plan that includes a default investment option that meets the criteria prescribed by regulation.

The administrator may, in addition, subject to the conditions prescribed by regulation, offer other investment options of varying degrees of risk and expected return that would allow a prudent person to create a portfolio of investments appropriate for retirement savings and from among which a member may make an investment choice.

If a member does not make an investment choice under the second paragraph, the investment option provided for in the first paragraph applies to the account of the member.

23. A member's investment choice may not be changed by the administrator except on the request of the member or in the circumstances determined by regulation.

24. The administrator must provide a plan to its members at a low cost. The criteria for determining if the plan meets the low-cost criterion as well as the

fees the administrator may charge members and those that may be deducted from the return on fund assets are established by regulation.

§2.—*Licences*

25. A legal person referred to in section 13 applying for a licence must forward the application to the Autorité des marchés financiers in the form it prescribes.

The application must be accompanied by the fees set by regulation and the following documents:

(1) a five-year business plan dealing with the proposed development of activities related to the voluntary retirement savings plan and showing how the legal person intends to comply with the conditions and obligations applicable under this subdivision;

(2) a document attesting that the amount by which the assets of the legal person exceed the liabilities is at least equal to the amount set by regulation, or an irrevocable letter of credit or a suretyship, which letter or suretyship is in an amount set by regulation and is issued by a financial institution licensed as an insurer, trust company or deposit institution under an Act of Canada or of a Canadian province or territory;

(3) a certificate confirming that the legal person holds liability insurance in accordance with the requirements prescribed by regulation; and

(4) any other document prescribed by regulation.

26. The Autorité des marchés financiers issues a licence to legal persons who

(1) provide all the documents and information required under this Act and pay the fees and costs due; and

(2) in the opinion of the Autorité des marchés financiers, are able to comply with the conditions and obligations applicable under this subdivision.

27. In order to maintain its licence, an administrator must at all times,

(1) maintain its liability insurance in accordance with the requirements determined by regulation;

(2) maintain its operational capability and the expertise required to administer a voluntary retirement savings plan adequately;

(3) in respect of its activities as insurer, trust company or investment fund manager, comply with the Acts and the regulations and any orders, written

instructions or undertakings made under any Act governing those activities;
and

(4) have a satisfactory financial situation.

28. The Autorité des marchés financiers may suspend or revoke the licence of any administrator that ceases to comply with the obligations set out in section 27.

29. The Autorité des marchés financiers may also suspend or revoke a licence when the Régie informs it that

(1) the administrator is not in compliance with this Act or with an order of the Régie; or

(2) the administrator has not registered a new plan within 180 days after the termination of a plan.

30. The Autorité des marchés financiers cancels the licence of an administrator obtained through fraud or as the result of an error.

The Autorité des marchés financiers also cancels the licence when the Régie informs it that the administrator has not filed an application for the registration of the plan within 90 days of the issue of the licence or that the administrator has been denied the registration of a plan.

31. The Autorité des marchés financiers revokes an administrator's licence at the request of the administrator when it receives confirmation from the Régie that all obligations with respect to the revocation of the registration of a plan have been complied with.

32. Following an amalgamation of administrators, the Autorité des marchés financiers revokes the licences of the administrators that have amalgamated and issues a new licence to the administrator resulting from the amalgamation.

The administrator resulting from the amalgamation retains the management of the voluntary retirement savings plan it designates and winds up the assets of the other plans in accordance with the conditions prescribed in section 74.

DIVISION II

EMPLOYERS

33. An employer within the meaning of subparagraph 7 of section 1 of the Act respecting labour standards (R.S.Q., chapter N-1.1) having an establishment in Québec may provide a voluntary retirement savings plan to employees.

However, any employer who, on 31 December of a year, employs five eligible employees or more must, in the year that follows, subscribe to a voluntary

retirement savings plan with the administrator of such a plan and automatically register those employees in the plan.

For the purposes of this division, “eligible employee” means an employee who

(1) is an employee within the meaning of subparagraph 10 of section 1 of the Act respecting labour standards and carries out work in Québec, or who is referred to in paragraphs 1 or 2 of section 2 of that Act;

(2) is credited with one year of uninterrupted service within the meaning of subparagraph 12 of section 1 of the Act respecting labour standards; and

(3) is without a registered retirement savings plan in the enterprise of the employer referred to in the second paragraph or a registered pension plan within the meaning of the Income Tax Act established by the employer, for which payroll deductions may be made.

34. At least 30 days before subscribing to a voluntary retirement savings plan with the administrator of such a plan, an employer must notify each employee in writing

(1) of the employer’s intention to subscribe to the plan;

(2) of any existing business relationship the employer has with that administrator;

(3) of the fact that eligible employees are automatically registered in the plan and that they will have the opportunity to renounce membership in the plan;

(4) of the requirement for an employee who is not an eligible employee and who wishes to become a member of the plan to inform the employer;

(5) of the fact that the employee may determine his or her own contribution rate;

(6) of any contribution the employer agrees to pay into the plan or the method of calculating it; and

(7) of any other information determined by regulation.

35. The contract between the employer and the plan administrator must specify

(1) that the employer is responsible for remitting the contributions paid by employees registered in the plan and the employer’s own contributions, if applicable, to the administrator, and informing the administrator of any change relating to the contribution rate;

(2) the frequency of the remittances and the consequences if the employer fails to comply with the provisions of the contract in that respect;

(3) whether the employer or the administrator sends the notice under section 36; and

(4) any other information determined by regulation.

36. Not later than 30 days after the contract is signed, either the plan administrator or the employer notifies each registered employee in writing of his or her membership in the plan.

The notice must inform the employees

(1) of an eligible employee's right to renounce membership in the plan by notifying the employer in writing within 60 days after the notice is sent;

(2) of the possibility for any plan member to terminate his or her membership in the plan at any time;

(3) of the default contribution rate and that the member may change the rate;

(4) of the default investment option and any other investment options and that the member may change his or her investment option; and

(5) of any other information determined by regulation.

37. An employer who has subscribed to a voluntary retirement savings plan must automatically register in the plan any employee who becomes an eligible employee and any employee who so requests.

An employer must also offer the plan to any eligible employee who renounced or terminated his or her membership in the plan every two years from the date of renunciation or termination.

The rules set out in the first and second paragraphs apply even if the number of eligible employees is reduced to less than five, unless, as long as the number of eligible employees is less than five, all eligible employees renounced or terminated their membership in the plan.

An employer has 30 days to register the eligible employees and any other employee who so requests in the plan and provide the notice required under section 36 to the employees who must be registered automatically.

38. When an eligible employee renounces membership in the plan, the employer must keep proof of the renunciation notice and notify the plan administrator within 30 days.

39. An employer may change voluntary retirement savings plans. The employer must then pay all costs related to the transfer of the plan assets.

40. An employer is not liable for the acts and omissions of the plan administrator.

41. An employer must provide the plan administrator with the documents and information required by the plan administrator to comply with this Act.

42. An employer must notify the plan administrator of the termination of employment of a member or termination of membership of an employee within 30 days after the date of termination of employment or the date the notice required under the second paragraph of section 60 is received.

43. Subject to the regulations, an employer may not demand, accept or agree to accept any inducement from a plan administrator, or offer or agree to offer a plan administrator any inducement, with a view to entering into a contract with the administrator in respect of a voluntary retirement savings plan.

CHAPTER IV

CONTRIBUTIONS

DIVISION I

COLLECTION, REMITTANCE, AND CONTRIBUTION RATES

44. A member establishes the rate of his or her contribution to the voluntary retirement savings plan, failing which, the rate set by regulation applies.

45. A member may, at any time, change his or her rate of contribution to the plan. However, an employee who is a member of the plan provided by his or her employer may not change the rate of contribution more than twice per 12-month period, unless the employer agrees that the member do so more often. A member may also, on the conditions determined by regulation, set his or her rate of contribution at 0%.

An employer has 30 days in which to give effect to a member's request.

46. An employer is not required to contribute to the plan on behalf of the employees.

An employer who contributes to a member's plan may change the rate at which the employer contributes to the plan. The employer must then send a written notice to the plan administrator and the members concerned.

The change in rate cannot take effect until the thirtieth day after the date the notice is sent if it means the employer contribution is reduced.

47. From the sixty-first day after the notice mentioned in section 36 is sent, an employer must deduct the members' contributions for each pay period from their salary.

48. An employer must remit member contributions to the plan administrator on or before the last day of the month that follows the day on which they are collected, along with the contributions the employer agreed to pay on behalf of the members.

49. If an employer fails to pay the contributions to the plan administrator within the time limit set out in section 48, the employer must pay interest on the contributions due.

Contributions bear interest from the last day of the month that follows the month member contributions are collected until they are remitted to the administrator, at the rate and in the manner determined by regulation.

50. If contributions due in respect of a member are paid after the transfer, refund or payment of the balance of the member's accounts, the plan administrator must transfer or pay those contributions as it did for the accounts in which they were to be entered.

51. Until the contributions and interest accrued are remitted to the plan administrator, an employer is deemed to hold those amounts in trust, whether or not the employer has kept them separate from the employer's own assets.

52. Within 60 days after the time limit set in section 48, a plan administrator must notify the Régie of any unremitted contribution and the measures taken to ensure remittance.

DIVISION II

LOCKING IN

53. The administrator of a voluntary retirement savings plan must keep a locked-in account and a not locked-in account in its books for each member.

54. Employer contributions are credited to the locked-in account and member contributions are credited to the not locked-in account. Each account is also credited with accrued interest and the other amounts determined by regulation.

55. No sum may be transferred between the locked-in account and not locked-in account of the member.

DIVISION III

REFUNDS AND TRANSFERS

§1. — *Locked-in account*

56. When employment of a member is terminated or the member reaches the age of 55, all or part of his or her locked-in account may be transferred to a pension plan determined by regulation and chosen by the member.

The plan administrator must make the transfer within 60 days after the member's request.

57. A member may withdraw the funds in the locked-in account in either of the following cases:

(1) if a physician certifies that the member's physical or mental disability reduces his or her life expectancy;

(2) if the balance in the member's locked-in account is, subject to any other percentage set by regulation, less than 20% of the Maximum Pensionable Earnings, established in accordance with the Act respecting the Québec Pension Plan (R.S.Q., chapter R-9) for the year in which the member is no longer employed by an employer who subscribed to a voluntary retirement savings plan; or

(3) if the member no longer resides in Canada, when he or she is deemed to have not resided in Canada, for the purposes of the Taxation Act (R.S.Q., chapter I-3), for at least two years.

Within 60 days after the member's request, the plan administrator must remit the sums withdrawn by the member.

§2. — *Not locked-in account*

58. At least once per 12-month period and at any time in the cases mentioned in subparagraphs 1 and 3 of the first paragraph of section 57, a member is entitled, upon a request to the plan administrator, to the refund of all or part of the not locked-in account or to the transfer of all or part of that account to a pension plan determined by regulation and chosen by the member.

The administrator must make the refund or transfer within 60 days after the member's request.

DIVISION IV

VARIABLE PAYMENTS

59. The voluntary retirement savings plan may provide that a member who has reached the age determined by regulation or the member's spouse as defined

in section 62 may elect to receive variable payments from the funds in his or her accounts, on the conditions and within the time provided by regulation.

DIVISION V

TERMINATION OF MEMBERSHIP

60. A member may, at any time, terminate his or her membership in the voluntary retirement savings plan.

The member must inform the plan administrator of the fact in writing or, if the member's employer collects his or her contributions, the member must notify the employer so that any payment of contributions to his or her account cease.

The employer must remit to the administrator any contributions collected before receiving the notice.

61. An employee who terminated his or her membership in the plan may not, unless the employer agrees, again become a member of the plan before the end of a 12-month period after the date his or her membership terminated.

CHAPTER V

DEATH OF MEMBER

62. For the purposes of this chapter, the spouse of a member is the person who, on the day before the death of the member,

(1) is married to or in a civil union with the member;

(2) has been living in a conjugal relationship with a member who is neither married nor in a civil union, whether the person is of the opposite or the same sex, for a period of not less than three years, or for a period of not less than one year if

(a) at least one child is born, or to be born, of their union;

(b) they have adopted, jointly, at least one child while living together in a conjugal relationship; or

(c) one of them has adopted at least one child who is the child of the other, while living together in a conjugal relationship.

For the purposes of subparagraph 2 of the first paragraph, the birth or adoption of a child prior to the period of conjugal relationship existing on the day as of which spousal status is established may qualify a person as a spouse.

Despite subparagraph 1 of the first paragraph, a person who is legally separated from bed and board on the day as of which spousal status is established is not entitled to any benefit under this chapter unless the person is the member's successor.

63. On the death of a member who was not receiving variable payments, his or her spouse or, if the member has no spouse, his or her successors are entitled to a benefit the amount of which is equal to the balance in the member's accounts, including interest accrued until the date of payment or transfer of all or part of the amount to a pension plan determined by regulation and chosen by the member, provided the fiscal rules so allow.

The member's spouse may however waive entitlement to the death benefit by notifying the plan administrator of the fact in writing. The spouse may revoke such a waiver by notifying the plan administrator of the revocation in writing before the member's death.

64. The designation and the revocation of beneficiaries are governed by articles 2445 to 2459 of the Civil Code, with the necessary modifications.

CHAPTER VI

TRANSFER OF BENEFITS BETWEEN SPOUSES

65. In the event of separation from bed and board, divorce or marriage annulment or the dissolution otherwise than by death or the annulment of a civil union, the benefits accumulated by a member under a voluntary retirement savings plan are, upon application in writing to the plan administrator, partitioned between the member and his or her spouse to the extent determined in the Civil Code or by a court judgment or a notarized joint declaration dissolving a civil union.

Where the court or the notarized declaration awards to the spouse of a member, in payment of a compensatory allowance, benefits accumulated by the member under a voluntary retirement savings plan, the benefits are, upon application in writing to the administrator, transferred to the spouse to the extent provided by the court judgment or by the notarized declaration.

66. Upon the introduction of an application for separation from bed and board, divorce, annulment of marriage, the dissolution or annulment of a civil union or the payment of a compensatory allowance, the member and his or her spouse are entitled, upon application in writing to the plan administrator, to obtain a statement of the benefits accumulated by the member under the voluntary retirement savings plan and the value of the benefits at the date of the institution of the action; the statement also contains any other information prescribed by regulation. The benefits and their value are determined according to the rules set by regulation.

The member and the member's spouse are also entitled to receive a statement of benefits, upon an application in writing to the administrator, for the purposes of pre-hearing mediation concerning a family matter or of a joint procedure before a notary for the dissolution of their civil union. The statement contains the information determined by regulation.

67. In the event of cessation of the conjugal relationship between a member of the plan and a spouse, within the meaning of subparagraph 2 of the first paragraph of section 62, the member and the spouse may, in the ensuing year, agree in writing to a partition of the benefits accumulated by the member under the plan; such an agreement cannot, however, confer on the spouse more than 50% of the value of the benefits.

For that purpose, the member and the spouse are entitled to obtain the statement described in section 66 and established at the date on which they ceased to live together in a conjugal relationship.

At the request of the member, the plan administrator must award benefits to the spouse to the extent of the agreement under the first paragraph.

68. The rules on the partition of a member's benefits from both the locked-in and the not locked-in accounts are determined by regulation.

When a member's benefits are partitioned or used to pay a compensatory allowance,

(1) benefits awarded to the spouse from the member's locked-in account may be used, except in the cases determined by regulation, only to constitute a life pension, even when the benefits are transferred to a pension plan determined by regulation;

(2) benefits awarded to the spouse from the member's not locked-in account may be transferred to a pension plan determined by regulation or refunded at the request of the spouse on the conditions determined by regulation.

However, the benefits awarded to the spouse following a seizure for non-payment of support in accordance with the fourth paragraph of article 553 of the Code of Civil Procedure (R.S.Q., chapter C-25) must be paid in a lump sum, in the manner determined by regulation.

69. The cost of producing the statement referred to in section 66 and the expenses incurred for effecting the transfer of benefits between spouses may be claimed from the spouses only up to the limit set by regulation.

The costs and expenses claimed from the spouses are divided equally between them, unless they decide to opt for another form of apportionment. Payment of the amount that must be borne by each spouse may be effected by the plan administrator through a reduction of the value of the spouse's benefits, unless that spouse chooses another method of payment.

CHAPTER VII

TERMINATION AND WINDING-UP

70. The Régie may decide to terminate a voluntary retirement savings plan

(1) if the plan administrator fails to comply with an order issued by the Régie under this Act; or

(2) if the plan has no more members.

71. The Régie orders the termination of the plan if the Autorité des marchés financiers informs it that the plan administrator is no longer complying with the conditions set out in section 27 in order to maintain the licence.

72. The termination of the plan becomes effective when the total assets are liquidated.

73. The plan administrator must liquidate the assets of the plan within 120 days after receiving notice of the Régie's decision to terminate the plan.

74. A plan administrator that wishes to terminate a plan must give the Régie prior written notice. The Régie must send the administrator an acknowledgement of receipt showing the date the notice was received.

Within 60 days following the date on which the Régie receives notice from the administrator, the administrator may begin liquidating the assets of the plan in the manner provided for in section 75, unless it receives from the Régie a request for information, a notice extending the period of examination of the notice or an order to suspend the liquidation of the assets so that measures to protect the members' rights may be put in place within the time and on the conditions set by the Régie.

75. When a plan is terminated, the plan administrator, within 30 days after receiving the Régie's decision to terminate the plan or when the time limit provided in the second paragraph of section 74 expires, must inform the Régie, the members and employers that the plan assets will be transferred to the voluntary retirement savings plan indicated by the administrator within the following 90 days.

The notice required under the first paragraph must contain:

(1) in the case of a member for whom an employer subscribed to a voluntary retirement savings plan on the date the notice required under the first paragraph is sent:

(a) the value of the sums accrued in the member's not locked-in and locked-in accounts on the date the notice required under the first paragraph is sent; and

(b) a note that the sums accrued in each of the accounts will be transferred to the voluntary retirement savings plan chosen by the employer;

(2) in the case of a member for whom no employer has subscribed to a voluntary retirement savings plan on the date the notice required under the first paragraph is sent:

(a) the value of the sums accrued in the member's accounts on the date the notice required under the first paragraph is sent;

(b) the member's options for the payment of his or her benefits from among those prescribed by regulation for each of his or her accounts; and

(c) a note that the member may request the administrator to pay the benefits in the manner the member indicates before the expected date of the liquidation of the plan assets; and

(3) in the case of an employer who is subscribed to a voluntary retirement savings plan on the date the notice provided for in the first paragraph is sent:

(a) the value of the plan assets that corresponds to the aggregate of the accounts of that employer's employees on the date the notice required under the first paragraph is sent; and

(b) a note that the employer may request that the assets be transferred to the voluntary retirement savings plan chosen by the employer before the expected date of the liquidation of the plan assets.

The administrator must, within 30 days following the member's or the employer's request, as the case may be, pay the benefits accrued to a member according to the option he or she has chosen or transfer the plan to the plan indicated by the employer. However, if the request is made within 30 days before the end of the 90-day time limit provided for in the first paragraph, the administrator must follow up on the request no later than the end of that 90-day time limit.

76. The plan administrator may obtain an extension from the Régie to liquidate the assets of the plan if the Régie is satisfied that it was impossible for the administrator to act within the time limit set in section 73, or if it is of the opinion that an extension is likely to serve the interests of the members.

77. The contributions an employer is required to remit to the plan administrator under section 48 must be paid into the plan until the date the assets are transferred to the plan indicated by the employer, or if there is no such plan, to the plan indicated by the administrator.

78. During the liquidation of the plan assets, the Régie may order the application, within the time and on the conditions it sets, of any remedial measure it indicates. The order interrupts the settlement of benefits until such

time as the Régie has certified to the person or body having received the order that the order has been complied with.

79. The plan administrator may continue to remit variable payments to the person entitled to them as they become due, until the date the person's benefits are paid in full.

The accounts of a person who receives variable payments must be reduced by the amount of the payments made until the date the person's benefits are paid in full.

80. In the case of the termination of a plan and the liquidation of the plan assets, the plan administrator pays all costs arising from the refund and transfer of the assets.

81. After liquidating the plan assets, the administrator must render an account to the Régie within the following 60 days by filing

(1) a document signed by a person in authority attesting that the liquidated assets are those to which the members affected by the termination of the plan were entitled and that they were disposed of in keeping with the law;

(2) a wind-up and termination report consisting of the annual statement and the financial report required under the second paragraph of section 21; the report must cover the period between 1 January of the current year and the date of liquidation of the plan assets; and

(3) any other information prescribed by regulation.

82. Any amount due to a member affected by the termination of the plan that is not claimed within three years after the date of liquidation of the assets must be transferred to the Minister of Revenue. The amount may, however, be transferred before the expiry of that time if the only benefits remaining to be settled are payable to untraceable members. The transfer must be accompanied by a statement setting out the amount due and indicating, where applicable, the name and last known address of the member.

The Unclaimed Property Act (R.S.Q., chapter B-5.1) applies to the amount transferred to the Minister of Revenue.

83. The registration of a terminated pension plan is deemed to be revoked 60 days after the plan administrator has rendered an account to the Régie of the liquidation of the plan assets.

The Régie must inform the Autorité des marchés financiers without delay that the registration of the plan has been revoked.

CHAPTER VIII

OBLIGATION TO INFORM

84. In addition to the other obligations to provide information under this Act, the administrator of a voluntary retirement savings plan must

(1) provide each member, within 45 days following the end of each fiscal year of the plan and in the manner determined by regulation, with a statement that indicates, in particular, the cumulative value of the contributions and other amounts paid into his or her accounts under the plan from the beginning of his or her membership, as well as the other information prescribed by regulation;

(2) provide each member concerned, within 30 days of the date the member is in one of the situations described in the first paragraph of section 56, with a statement that contains the information prescribed by regulation; and

(3) provide the spouse of a deceased member or his or her successors, within 30 days following the date the administrator receives notice of the member's death, with a statement containing the information required by regulation.

CHAPTER IX

FUNCTIONS AND POWERS OF THE RÉGIE

85. In addition to the other functions conferred on it by this Act, the Régie must oversee voluntary retirement savings plans. To that end, it must ensure that they are administered and operated in accordance with this Act.

86. To exercise its functions under this Act, the Régie may, in addition to the other powers conferred on it by this Act and the Act respecting the Québec Pension Plan,

(1) provide information in the form of general or specific instructions regarding the administration of this Act;

(2) carry out inspections regarding the plans;

(3) prepare, or cause to be prepared, any document provided for in this Act or required by the Régie but not furnished in accordance with this Act or the requirements of the Régie, at the expense of the person who is required to furnish it;

(4) require from a plan administrator or an employer, on the conditions and within the time established by the Régie, any document or information it considers necessary for the purposes of this Act;

(5) require from a plan administrator the payment of the costs established by regulation and related to an inspection or an inquiry regarding a plan.

87. The Régie may make an order directing a plan administrator or an employer to take any remedial measure determined by the Régie within the time and on the conditions established by the Régie, if it is of the opinion that

(1) the action taken by the administrator or the employer is contrary to sound financial practices;

(2) the financial report prepared under the second paragraph of section 21 does not comply with generally accepted accounting principles;

(3) the plan or its administration is not in compliance with this Act, particularly with the goal of low administration costs; or

(4) the contents of a document provided for in this Act or required by the Régie are not in compliance with this Act or the requirements of the Régie.

88. The Régie may delegate any of its powers under this Act to a member of its board of directors, a member of its personnel or a committee formed of board members or personnel members. The Régie may also, in the act of delegation, authorize the subdelegation of the powers enumerated in the act. In that case, it must identify the member of its board of directors or the member of its personnel to whom powers may be subdelegated. The act of delegation is published in the *Gazette officielle du Québec*.

89. No document relating to a matter covered by this Act is binding on the Régie or may be attributed to it unless it is signed by the chair of its board of directors, the president and chief executive officer of the Régie or a member of its board of directors or personnel but, in the latter case, only to the extent provided in the instrument under which powers are delegated to that member or in the internal by-laws of the Régie.

90. For the purposes of an inspection regarding a plan, an inspector appointed by the Régie may, at any reasonable time, enter any premises where the plan administrator or the employer keeps a document relating to the plan, examine the document, and take an extract from it or make a copy of it.

Whoever has custody, possession or control of the document must, on request, make it available to the inspector and facilitate examination of it.

On request, the inspector must produce identification and a certificate of authority issued by the Régie.

91. The Régie must periodically post a bulletin on its website containing the general instructions it provides under paragraph 1 of section 86 and any other information provided for by regulation.

92. If, in rendering a decision, a problem arises as to the interpretation of this Act or a voluntary retirement savings plan, the Régie may, where it is of the opinion that the interest of the parties to the plan warrants a prompt solution

of the problem, postpone its decision and submit the problem to the court by way of a motion.

Articles 454 to 456 of the Code of Civil Procedure apply, with the necessary modifications.

93. The Régie may apply by motion to a judge of the Superior Court to obtain an injunction in respect of any matter covered by this Act.

The application for an injunction constitutes in itself an action.

The procedure prescribed in the Code of Civil Procedure applies, except that the Régie cannot be required to give security.

94. The Régie may, of its own initiative and without notice, intervene in any civil action or arbitration proceedings pertaining to this Act to participate in the proof and hearing.

95. The Régie may intervene before the Administrative Tribunal of Québec in any proceeding relating to this Act at any time until the end of the proof and hearing.

If it wishes to intervene, the Régie must send a notice to that effect to each of the parties and to the Tribunal; the Régie is then considered to be a party to the proceeding.

96. The Régie may assume, for the period it determines, the provisional administration of all or part of a plan or entrust it to the person or body it designates, in the following cases:

(1) where the Régie or the investigator it has designated is making an inquiry into the plan's conformity with the law or into its administration;

(2) where, in the opinion of the Régie, the plan or the administration of the plan is not in conformity with this Act;

(3) where, in the opinion of the Régie, the plan administrator has committed a malversation, a breach of trust or other form of misconduct;

(4) where the Régie becomes aware that the plan administrator has failed to comply with an order issued by the Régie; or

(5) when the licence is suspended by the Autorité des marchés financiers under paragraph 1 of section 29.

Sections 184 to 186, the first paragraph of section 188 and the second paragraph of section 192 of the Supplemental Pension Plans Act (R.S.Q., chapter R-15.1) apply to this Act, with the necessary modifications, where the Régie requires the appointment of a provisional administrator.

97. The Régie determines the remuneration and any allowances and indemnities to be paid to the designated provisional administrator.

98. The expenses relating to the provisional administration of a plan are borne by the plan administrator unless the Régie elects to assume them.

CHAPTER X

FUNCTIONS AND POWERS OF THE AUTORITÉ DES MARCHÉS FINANCIERS

99. The functions and powers conferred on the Autorité des marchés financiers under the Acts it administers in compliance with section 7 of the Act respecting the Autorité des marchés financiers (R.S.Q., chapter A-33.2), with respect to insurers, trust companies and investment fund managers, apply to administrators holding a licence issued under this Act, with the necessary modifications.

Furthermore, sections 329 to 336 of the Act respecting trust companies and savings companies apply to any administrator holding a licence referred to in subparagraph 1 of the second paragraph of section 13.

100. The Autorité des marchés financiers may prescribe the forms required for the purpose of exercising its functions and powers under this Act.

101. The Autorité des marchés financiers is responsible for the administration of sections 13, 25 to 32, 99 and 100.

CHAPTER XI

FUNCTIONS AND POWERS OF THE COMMISSION DES NORMES DU TRAVAIL

102. The Commission des normes du travail supervises the application of the obligations set out in the second paragraph of section 33 and in sections 34 and 37.

103. Sections 103 to 110 of the Act respecting labour standards apply to the inquiries the Commission may carry out for that purpose, with the necessary modifications.

CHAPTER XII

PROCEEDINGS

104. A person concerned may contest a decision or order of the Régie before the Administrative Tribunal of Québec within 30 days of notification of the decision or order.

105. Any decision by the Autorité des marchés financiers under this Act is subject to the Act respecting the Autorité des marchés financiers and may be reviewed under that Act.

CHAPTER XIII

REGULATIONS

106. The Government may, by regulation,

- (1) for the purposes of section 3, determine
 - (a) the manner of registering a voluntary retirement savings plan;
 - (b) the types of amendments that must be registered and the manner of registering them;
 - (c) the documents and information the administrator must file with the Régie; and
 - (d) the fees the administrator must deposit with the Régie;
- (2) for the purposes of section 4, determine the information that must be included in the text of the plan;
- (3) for the purposes of section 16, prescribe the information that must be included in a contract between the plan administrator and the employer or a member, as the case may be;
- (4) for the purposes of section 20, determine the cases where a plan administrator may give, offer or agree to give or offer to an employer an inducement to enter into a contract with the administrator in respect of a voluntary retirement savings plan, the conditions that apply and the type of inducement, if any;
- (5) for the purposes of section 21, prescribe the fees to be paid with the annual statement as well as the cases in which the report need not be audited by an accountant;
- (6) for the purposes of section 22, prescribe the criteria to be met by the default investment option as well as the conditions with regard to the other investment options the plan administrator may offer, from among which a member may make an investment choice;
- (7) for the purposes of section 23, prescribe the circumstances in which the plan administrator may change a member's investment choice;
- (8) for the purposes of section 24, establish the criteria for determining if the plan meets the low cost criterion, as well as the fees a plan administrator

may charge members and those that may be deducted from the return on fund assets;

(9) for the purposes of section 25, determine

(a) the fees that must accompany the application for licence to act as administrator of a voluntary retirement savings plan;

(b) the amounts referred to in paragraph 2 of that section;

(c) the requirements for the liability insurance a plan administrator must hold; and

(d) the other documents that must accompany the application for a licence;

(10) for the purposes of section 27, determine the requirements for the maintenance by a plan administrator of its liability insurance;

(11) for the purposes of section 34, prescribe the information that may be contained in the notice the employer sends the employees;

(12) for the purposes of section 35, prescribe the information that must be contained in the contract entered into between the employer and a plan administrator;

(13) for the purposes of section 36, provide for the information that may be contained in the notice the employer or the plan administrator sends each employee registered in the plan;

(14) for the purposes of section 43, provide the cases in which an employer may demand, accept or agree to accept an inducement from a plan administrator, or offer or agree to offer a plan administrator an inducement, with a view to entering into a contract with the administrator in respect of a voluntary retirement savings plan, the conditions that apply and the type of inducement, if any;

(15) for the purposes of section 44, set the default contribution rate;

(16) for the purposes of section 45, determine the conditions under which a member may set a contribution rate at 0%;

(17) for the purposes of section 54, determine the other amounts credited to the member's locked-in and not locked-in accounts;

(18) for the purposes of sections 56, 58, 63, 68 and 111, determine the pension plans to which the amounts from the locked-in and not locked-in accounts, as the case may be, may be transferred;

(19) for the purposes of section 57, set a percentage other than 20%;

- (20) for the purposes of section 59, regulate variable payments;
- (21) for the purposes of section 66, prescribe
 - (a) the other information contained in the statement the member and his or her spouse may apply for upon the introduction of an application for separation from bed and board, divorce, annulment of marriage, the dissolution or annulment of a civil union or the payment of a compensatory allowance;
 - (b) the rules according to which the benefits accumulated by the member and their value are determined; and
 - (c) the information contained in the statement the member and his or her spouse are entitled to receive for the purposes of a pre-hearing mediation;
- (22) for the purposes of section 68, prescribe
 - (a) the rules on the partition of a member's benefits from both the locked-in and the not locked-in accounts;
 - (b) the conditions under which the spouse may request a refund; and
 - (c) the manner in which the benefits awarded to the spouse following a seizure for non-payment of support must be paid;
- (23) for the purposes of section 69, set the limit for the costs and expenses that may be claimed;
- (24) for the purposes of section 75, determine the employee's options;
- (25) for the purposes of section 81, prescribe the information a plan administrator must file with the Régie after liquidating the plan assets;
- (26) for the purposes of section 84, prescribe the manner in which a plan administrator must provide the statements to the members, as well as the information the statements must contain;
- (27) for the purposes of section 86, establish the costs related to an inspection or an inquiry that a plan administrator may charge;
- (28) for the purposes of section 91, prescribe the information the Régie may post on its website; and
- (29) prescribe any other measure required for the application of this Act.

CHAPTER XIV

PENAL PROVISIONS

107. The following are guilty of an offence and liable to a fine of \$600 to \$75,000:

(1) a plan administrator that commits an offence under section 17, 18, 19 or 20, the first paragraph of section 22, section 23, 24, 50, 52, 53 or 55, the second paragraph of section 56, 57 or 58 or section 73, 74, 75, 80, 81 or 84;

(2) a plan administrator that neglects or refuses to provide a notice or statement provided for under this Act;

(3) a plan administrator that neglects or refuses to file with the Autorité des marchés financiers or the Régie a statement or report required under this Act;

(4) a plan administrator that contravenes an order made under this Act;

(5) an employer that fails to remit contributions as required under section 48 or the third paragraph of section 60;

(6) a person who, with the intention of avoiding the application of this Act, destroys, alters, falsifies, secretes or otherwise disposes of a record or a written or other document;

(7) a person who acts as a plan administrator or suggests they are one without holding the licence required under section 13;

(8) a person who offers a voluntary retirement savings plan that is not registered in compliance with this Act;

(9) a person who provides false documents or information, or access to false documents or information, to the Autorité des marchés financiers or the Régie, or to a staff member of the Autorité des marchés financiers or the Régie, in the course of activities governed by this Act; and

(10) a person who hinders or attempts to hinder a person acting as required or authorized by this Act.

In the case of a subsequent conviction, the amounts of the fine provided for in the first paragraph are doubled.

108. An employer is guilty of an offence and liable to a fine of \$600 to \$1,200 if the employer

(1) commits an offence under the second paragraph of section 33, section 34, 36, 37, 38, 39, 41, 42 or 43, the second paragraph of section 46 or section 47, 49 or 77; or

(2) contravenes an order made under this Act.

In the case of a subsequent conviction, the amounts of the fine provided for in the first paragraph are doubled.

109. A person who, by an act or omission, assists or, by encouragement, advice or consent or by an authorization or an order, induces another person to commit an offence under this Act is guilty of the same offence.

CHAPTER XV

MISCELLANEOUS PROVISIONS

110. The fiscal year of a voluntary retirement savings plan ends on 31 December each year.

111. Unless otherwise provided by law, the following amounts or contributions and benefits are unassignable and unseizable:

(1) all contributions remitted or to be remitted to a plan administrator, with accrued interest;

(2) all amounts refunded or pension benefits paid under this Act; and

(3) all amounts awarded to the spouse of a member following a transfer of benefits effected under Chapter VI, with accrued interest, and the benefits deriving from such amounts.

Except as far as they derive from members' not locked-in accounts, any of those amounts transferred to a pension plan determined by regulation, the accrued interest, and any refunds of such amounts are also unassignable and unseizable.

112. The funds in members' accounts may be pooled by the plan administrator for the purpose of investing the assets of the plan.

113. The Régie and the Autorité des marchés financiers may, in accordance with the law, enter into an agreement with a government in Canada other than the Gouvernement du Québec or with a department or body of that government in order to authorize

(1) a supervisory authority under a legislative authority other than the Parliament of Québec to exercise any of the powers conferred by this Act on the Régie and the Autorité des marchés financiers; and

(2) the Régie and the Autorité des marchés financiers to exercise any of the powers of such an authority.

Such agreements may, in particular,

(1) determine to what extent and on what conditions a voluntary retirement savings plan is subject to this Act and the legislation of a legislative authority other than the Parliament of Québec that is party to the agreement, as well as any other rule applicable to this plan; and

(2) establish requirements concerning a voluntary retirement savings plan, a plan administrator or an employer, in addition to the other requirements imposed by this Act and the legislation of a legislative authority other than the Parliament of Québec that is party to the agreement.

Any agreement is published in the *Gazette officielle du Québec*. On the expiry of at least 45 days after the publication, it is submitted to the Government for approval, with or without amendments. The agreement comes into force after approval, on the date it is published again in the *Gazette officielle du Québec* or on any later dates stated in the agreement.

The provisions of the agreement have force of law for the period during which it remains in force. In case of incompatibility, the provisions of the agreement that have force of law prevail over the provisions of this Act.

CHAPTER XVI

AMENDING PROVISIONS

CIVIL CODE OF QUÉBEC

114. Article 415 of the Civil Code of Québec is amended by replacing the first point in the list in the fifth paragraph by:

“— a plan governed by the Supplemental Pension Plans Act (chapter R-15.1) or by the Act respecting voluntary retirement savings plans (*insert the year and chapter number of this Act*) or that would be governed by one of those Acts if one of them applied where the spouse works;”.

ACT RESPECTING THE AUTORITÉ DES MARCHÉS FINANCIERS

115. Section 19.1 of the Act respecting the Autorité des marchés financiers (R.S.Q., chapter A-33.2) is amended

(1) by inserting “the members of a voluntary retirement savings plan administered by that person, partnership or other entity the” after “the rights of” in subparagraph 3 of the first paragraph;

(2) by inserting “12 of the Act respecting the Autorité des marchés financiers (chapter A-33.2), section” after “under section” in subparagraph 4 of the first paragraph.

116. Schedule I to the Act is amended by adding the following at the end:

“SECTIONS 13, 25 TO 32 AND 99 TO 101 OF THE ACT RESPECTING VOLUNTARY RETIREMENT SAVINGS PLANS (*insert the year and chapter number of this Act*)”.

ACT RESPECTING ADMINISTRATIVE JUSTICE

117. Schedule IV to the Act respecting administrative justice (R.S.Q., chapter J-3) is amended by inserting the following paragraph after paragraph 20.2:

“(20.2.1) section 104 of the Act respecting voluntary retirement savings plans (*insert the year and chapter number of this Act*);”.

ACT RESPECTING LABOUR STANDARDS

118. Section 5 of the Act respecting labour standards (R.S.Q., chapter N-1.1) is amended by adding the following paragraph at the end:

“The Commission shall also supervise the performance of the obligations described in the second paragraph of section 33 and in sections 34 and 37 of the Act respecting voluntary retirement savings plans (*insert the year and chapter number of this Act*).”

119. Section 122 of the Act is amended by adding the following subparagraph after subparagraph 7 of the first paragraph:

“(8) on the ground that such employee has exercised a right arising from the Act respecting voluntary retirement savings plans.”

CHAPTER XVII

TRANSITIONAL AND FINAL PROVISIONS

120. Despite the second paragraph of section 33, employers that, on 31 December 2012, have five eligible employees or more have two years from that date to comply with the obligation set out in that section.

121. Despite section 11 of the Regulations Act (R.S.Q., chapter R-18.1), the first proposed regulation under this Act may be made as early as the fifteenth day following the day it is published in the *Gazette officielle du Québec*.

122. The Minister of Employment and Social Solidarity is responsible for the administration of this Act, except sections 13, 25 to 32 and 99 to 101, which are under the responsibility of the Minister of Finance, and the second paragraph of section 33 and sections 34, 37, 102 and 103, which are under the responsibility of the Minister of Labour.

123. This Act comes into force on 1 January 2013.