

**Regulation respecting the application of the
Act respecting the funding of certain pension plans**

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Régie des rentes du Québec

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Act respecting the funding of certain pension plans**

O. C. 735-2005, 24 August 2005

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Regulation respecting the application of the Act respecting the funding of certain pension plans

Act respecting the funding of certain pension plans
(2005, c. 25, s. 14)

DIVISION I

REQUIRED CONTENT AND DEADLINE FOR SENDING CERTAIN DOCUMENTS

1. The instructions provided for in section 5 of the Act respecting the funding of certain pension plans (2005, c. 25), hereinafter called the “Act”, shall be given at the same time as the document referred to in section 3 or section 4 of the Act, as the case may be, is sent to the pension committee.

O. C. 735-2005, s. 1.

2. The notice under the first paragraph of section 7 of the Act must indicate, in addition to the information prescribed in that paragraph, the following information:

(1) the name of the plan and the number assigned to it by the Régie des rentes du Québec;

(2) the name of the employer concerned;

(3) a description of the amortization procedures provided for in section 8 of the Act as well as the mention that the employer wishes to take advantage of those procedures;

(4) an estimate of the plan's degree of solvency at the date of the plan's first complete actuarial valuation undertaken after 30 December 2004;

(5) the effect of the application of the procedures referred to in paragraph 3 on the plan's degree of solvency at the date that falls five years after the date of the valuation referred to in paragraph 4;

(6) an explanation of the limitations on payment of the benefits of the members and beneficiaries in the event of insufficient assets in a pension plan upon plan termination or withdrawal of an employer;

(7) a mention of the rule set out in the first paragraph of section 11 of the Act with respect to a plan amendment;

(8) a mention of the rule set out in the third paragraph of section 7 of the Act with respect to the consent of the members and beneficiaries;

(9) the address of the pension committee;

(10) the name, address and telephone number of the person to be contacted for any information concerning the notice;

(11) the name of the signatory, the attestation that he is duly authorized by the pension committee to give the notice and the date of signing.

O. C. 735-2005, s. 2.

3. The notice provided for in the second paragraph of section 7 of the Act must contain, in addition to the information prescribed in that paragraph and the information provided for in paragraphs 1 to 3, 8 and 9 of section 2, a mention that additional information concerning the plan's degree of solvency, the limitations on payment of the benefits of the members and beneficiaries in the event of insufficient assets in the pension plan upon plan termination or withdrawal of an employer as well as the specific rules that section 11 of the Act prescribes with respect to an amendment to the pension plan may be obtained from the person whose name, address and telephone number is indicated in the notice.

O. C. 735-2005, s. 3.

4. Where an employer has given to the pension committee the instructions provided for in section 5 of the Act, the report on the actuarial valuation referred to in section 2 of the Act or on a complete actuarial valuation of the plan carried out at a date prior to the end of the period of application of the procedures provided for in section 8 of the Act must include the following information:

(1) the date of the actuarial valuation referred to in section 2 of the Act and the date of the end of the period of application of the procedure provided for in section 8 of the Act;

(2) the amortization amounts relating to the sum referred to in the instructions that must be paid monthly until the end of that period, taking into the account the rule provided for in paragraph 2 of section 8 of the Act as well as the commuted value of those amounts;

(3) with respect to an employer who has provided the guarantee provided for in paragraph 2 of section 5 of the Act, the amount of the guarantee to be provided for each fiscal year of the pension plan, in whole or in part, for the remainder of the period of application of the procedures provided for in section 8 of the Act.

In the case of a report concerning a pension plan referred to in section 6 of the Act, the information provided for in subparagraph 2 of the first paragraph must be provided separately for each share of the plan's assets and liabilities constituted in accordance with the second paragraph of section 16.

The interest rate used to determine the commuted value referred to in subparagraph 2 of the first paragraph shall be identical to the rate used to determine the liabilities of the plan for the purpose of determining the plan's solvency.

O. C. 735-2005, s. 4.

5. The pension committee that sends the report referred to in section 4 to the Régie shall also send to each employer concerned, without delay, a notice indicating the information provided for in subparagraph 3 of the first paragraph of that section relative to such employer.

O. C. 735-2005, s. 5.

DIVISION II

GUARANTEE

§1. *Form, terms and conditions of the guarantee*

6. A guarantee under paragraph 2 of section 5 of the Act must be provided in the form of an irrevocable standby letter of credit.

O. C. 735-2005, s. 6.

7. The letter of credit must be issued by a financial institution that meets the following conditions:

(1) it is authorized to issue a letter of credit in Québec or in another place in Canada to which the agreement referred to in section 249 of the Supplement Pension Plans Act (R.S.Q., c. R-15.1) applies;

(2) one or the other of the following rating agencies assigns to it the rating shown opposite its name in the following table or a higher rating:

Rating agency	Rating
Dominion Bond Rating Service	A
Fitch Ratings	A
Moody's Investors Service	A2
Standard & Poor's	A.

O. C. 735-2005, s. 7.

8. The letter of credit must include the following information:

(1) the name and address of the financial institution that issues it and the name and address of the employer who is the originator;

(2) the name of the beneficiary pension fund and the address of the pension committee that administers it;

(3) the amount, in Canadian dollars, for which it is issued;

(4) the date of its issue and of its expiry;

(5) a mention that it is governed by the laws of Québec and that the standards provided for in the *Rules on International Standby Practices*, 1998 (publication number 590 of the International Chamber of Commerce) apply to it insofar as those standards are compatible with the provisions of this Regulation;

(6) the rules provided for in section 10 with respect to automatic renewal and payment in the event of non-renewal;

(7) a stipulation that the amount payable under the letter of credit will be paid to the pension fund upon presentation, before expiry of the letter, of a written payment demand signed by the person authorized by the pension committee to make the demand.

(8) the address, in Québec, where the payment demand can be made.

O. C. 735-2005, s. 7.

9. The employer must hand over the letter of credit to the pension committee at least 30 days before the beginning of the pension plan's fiscal year, or portion thereof, to which the letter is related.

However, in the case of the first letter of credit to be provided by the employer following the actuarial valuation referred to in section 2 of the Act and in the case where an actuarial valuation or a new determination made under sections 19 to 21 shows that the amount of the letter of credit provided for the current fiscal year, or portion thereof, must be increased, the employer must hand over the required letter of credit to the pension committee within 30 days following the date on which the committee sent the employer, as the case may be, the notice under section 5 or the update of that notice under section 22.

O. C. 735-2005, s. 9.

10. The date of expiry of the letter of credit must coincide with the date on which the pension plan's fiscal year ends.

The letter must stipulate that it will be automatically renewed for successive periods of one year, at the anniversary of its expiry, unless the issuer notifies the pension committee and the employer, by certified mail or registered letter, not less than 90 days before such anniversary that the letter will not be renewed.

In the event of non-renewal of the letter of credit, a demand for payment shall be deemed to have been made prior to the expiry on the date of expiry of the letter, in accordance with the letter's terms and conditions, unless the pension committee has sent the issuer and the Régie a written notice certifying that no payment is required. The notice must be sent no less than 30 days prior to the date of expiry of the letter. It takes effect on the date of expiry.

O. C. 735-2005, s. 10.

§2. *Amount of the letter of credit*

11. For the purposes of this subdivision, the expression “valuation date” means the date of the most recent complete actuarial valuation of the plan or the date of a new valuation carried out under sections 19 to 21; whichever is later.

The values referred to in sections 13 and 14 are determined by using the interest rate that must be used at the valuation date to determine the pension plan’s liabilities for the purpose of determining solvency.

O. C. 735-2005, s. 11.

12. The amount of the letter of credit shall, for any pension plan fiscal year, or portion thereof, to which the letter is related be equal to:

(1) the greatest monthly difference determined in accordance with section 13 at the valuation date for the months included in that fiscal year, or portion thereof;

(2) in the case of a letter of credit provided by an employer party to a pension plan referred to in section 6 of the Act, the product of the difference referred to in subparagraph 1 multiplied by the indicial fraction of that employer as determined by applying one or the other of sections 17 to 21.

O. C. 735-2005, s. 12.

13. For each month ending before the end of the five-year period following the date of the actuarial valuation referred to in section 2 of the Act and which falls, in whole or in part, between the valuation date and the date of the end of that five-year period, the monthly difference is determined, at the end of the month, by linear interpolation between the difference at the valuation date referred to in section 14 and the balance referred to in paragraph 2 of section 8 of the Act.

For each month falling, in whole or in part, between, on the one hand, the later of the valuation date or the date of the end of the five-year period following the date of the actuarial valuation referred to in section 2 of the Act, and on the other hand, the end of the period of application of the procedures provided for in section 8 of the Act, the monthly difference is equal to the value of the amortization amounts to be paid until the end of the said period of application.

O. C. 735-2005, s. 13.

14. The difference at the valuation date is equal to the difference between the following values determined at that date:

(1) the value of the amortization amounts relating to the sum referred to in the instructions provided in section 5 of the Act to be paid until the end of the period of application provided for in section 8 of the Act.

(2) the value of the amortization amounts relating to the same sum which would, were it not for the instructions provided for in section 5 of the Act, have been determined at the date of the actuarial valuation referred to in section 2 of the Act and

would have remained to be paid until the end of the five-year period following the date of that valuation.

However, where the amortization amounts relating to such sum and determined by the actuarial valuation referred to in section 2 of the Act have been changed, the difference at the valuation date is the greater of the amount calculated in accordance with the first paragraph and the amount of the letter of credit in effect at the valuation date. Moreover, where the amortization amounts have been eliminated, the difference at the valuation date is equal to zero.

O. C. 735-2005, s. 14.

15. Where the amount of the letter of credit provided by the employer is greater than the minimum guarantee amount for the plan's last fiscal year, or portion thereof, to which the letter is related, as determined by the last complete actuarial valuation of the plan or by a new valuation carried out under sections 19 to 21, the pension committee shall consent to the reduction in the amount of the letter of credit determined by the valuation.

O. C. 735-2005, s. 15.

§3. *Indicial fraction of the employer party to a pension plan referred to in section 6 of the Act*

16. Unless all the employers party to a pension plan referred to in section 6 of the Act are authorized under the same paragraph of section 5 of the Act to give the instructions provided for in the said section 5, the assets and liabilities of the plan are divided at the date of the actuarial valuation referred to in section 2 of the Act by supposing that a plan division had occurred.

The division is carried out prior to the valuation in such a way that a share of the assets and liabilities of the plan relates to the employers referred to in paragraph 1 of section 5 of the Act, another share relates to the employers referred to in paragraph 2 of that section and another share relates to employers acting under paragraph 3 of the said section.

The allocation of a share constituted, in accordance with the second paragraph, of a share of an initial unfunded actuarial liability, an improvement unfunded actuarial liability or a technical actuarial deficiency, determined prior to the date of the division does not have the effect of changing the type of such unfunded liability or deficiency.

Once such division has been carried out, each share is deemed to be a distinct multi-employer pension plan for the application of the Act and chapters X, XII and XIII of the Supplemental Pension Plans Act. The division ceases no later than the end of the period for applying the procedures provided for in section 8 of the Act.

O. C. 735-2005, s. 16.

17. The assets included in the share relating to the employers referred to in paragraph 2 of section 5 of the Act are distributed among those employers. The provisions of sections 220 to 227 of the Supplemental Pension Plans Act relating to the withdrawal of an employer party to a multi-employer pension plan apply to such distribution, adapted as required.

A debt is likewise determined for each of the employers in accordance with the provisions of section 228 of the Supplemental Pension Plans Act, adapted as required. The quotient obtained by dividing the debt determined for an employer by the total of such debts represents the indicial fraction relating to such employer.

O. C. 735-2005, s. 17.

18. Where an employer joins a pension plan at a date following the date on which the plan's assets and liabilities were the object of the division provided for in section 16, the assets and liabilities relating to that employer shall, unless the employer's participation in the plan is the result of a merger referred to in section 194 of the Supplemental Pension Plans Act, be added to the share of plan assets and liabilities relating to the employers referred to in paragraph 2 of section 5 of the Act. In this case, the concerned employer's indicial fraction is considered to be zero.

O. C. 735-2005, s. 18.

DIVISION III

RULES APPLICABLE TO THE CASES PROVIDED FOR IN SECTION 10 OF THE ACT

19. For the application of section 10 of the Act in the event that the guarantee provided by the employer ceases to be in conformity with the standards set out in this Regulation, the balance referred to in paragraph 2 of section 8 of the Act is once more determined so as to be equal to the amount of the guarantee at the date of the day before the day on which it ceased to be in conformity with the standards or, where being part of the balance relating to a share allocated by applying section 16 to the employers referred to in paragraph 2 of section 5 of the Act, is equal to the sum of the following amounts:

- (1) the amount of the guarantee on the date mentioned above;
- (2) the total of the guarantees required of the other employers for the plan fiscal year during which the five-year period referred to in paragraph 1 of section 8 of the Act ended.

The amortization amounts to be paid until the end of the period referred to in paragraph 1 of section 8 of the Act are fixed so as to amortize a sum equal to the difference between the following values, commuted to the date referred to in the first paragraph:

- (1) the value of the amortization amounts fixed at the time of the valuation referred to in section 2 of the Act and which at that time remained to be paid, by applying the procedures referred to in paragraphs 1 and 2 of section 8 of the Act, taking into account any changes in such amounts;
- (2) the value of the balance fixed in accordance with the first paragraph.

The indicial fraction of each employer referred to in paragraph 2 of section 5 of the Act is likewise fixed again so as to be equal to the quotient obtained by dividing the amount of the guarantee required of the employer for the plan fiscal year in which the

guarantee referred to in the first paragraph ceased to be in conformity with the standards of the Regulation by the total of the guarantees required of all the employers for that fiscal year.

O. C. 735-2005, s. 19.

20. For the application of section 10 of the Act in the case where the guarantee provided by an employer is realized during the five-year period referred to in paragraph 1 of section 8 of the Act, the balance referred to in paragraph 2 of section 8 of the Act is eliminated or, where that share of the balance relates to a share allocated by applying section 16 to the employers referred to in paragraph 2 of section 5 of the Act, fixed again so as to be equal to the total of the guarantees required of the other employers for the plan fiscal year in which the five-year period referred to in paragraph 1 of section 8 of the Act ends.

The amortization amounts to be paid until the end of the period referred to in paragraph 1 of section 8 of the Act must be fixed so as to amortize a sum equal to the difference between the following values, commuted to the date of the realization of the guarantee:

(1) the value of the amortization amounts fixed at the time of the valuation referred to in section 2 of the Act and which at that time remained to be paid, by applying the procedures referred to in section 8 of the Act, taking into account any changes in such amounts, that value however being reduced by the sum paid into the pension fund as a result of the realization of the letter of credit after applying subparagraph 3 of the second paragraph of section 12 of the Act;

(2) the value of the balance fixed in accordance with the first paragraph.

The indicial fraction of each employer referred to in paragraph 2 of section 5 of the Act whose guarantee has not been realized is likewise fixed again so as to be equal to the quotient obtained by dividing the amount of the guarantee required of the employer for the plan fiscal year in which the guarantee referred to in the first paragraph is realized by the total of the guarantees required of all the employers concerned for that fiscal year. The indicial fraction of the employer whose guarantee is realized is equal to zero.

O. C. 735-2005, s. 20.

21. For the application of section 10 of the Act in the case where the guarantee provided by an employer is realized after the five-year period referred to in paragraph 1 of section 8 of the Act ends, the balance referred to in paragraph 2 of section 8 of the Act is eliminated or, where a share of the balance relates to a share allocated by applying section 16 to the employers referred to in paragraph 2 of section 5 of the Act, is fixed again so as to be equal to the total of the guarantees required of the other employers for the plan fiscal year following the one in which the guarantee is realized.

If the balance is eliminated by applying the first paragraph, the amortization amounts remaining to be paid are cancelled. If the balance remains, the amortization amounts shall be fixed so as to amortize a sum equal to the difference between the following values, commuted to the date of realization of the guarantee:

(1) the value of the amortization amounts fixed at the time of the valuation referred to in section 2 of the Act and which at that time remained to be paid, by applying the procedures referred to in section 8 of the Act, taking into account any changes in such amounts, that value however being reduced by the sum paid into the pension fund as a result of the realization of the letter of credit after applying subparagraph 3 of the second paragraph of section 12 of the Act;

(2) the value of the balance fixed in accordance with the first paragraph.

The indicial fraction of each employer referred to in paragraph 2 of section 5 of the Act and whose guarantee has not been realized is likewise fixed again so as to be equal to the quotient obtained by dividing the amount of the guarantee required of the employer for the plan fiscal year in which the guarantee referred to in the first paragraph has been realized by the total of the guarantees required of all the employers concerned for that fiscal year. The indicial fraction of the employer whose guarantee has been realized is equal to zero.

O. C. 735-2005, s. 21.

22. The pension committee shall, without delay, send to the Régie a report setting out the changes made to the report relating to the most recent complete actuarial valuation of the plan as a result of any new determination provided for in this division. It shall also send without delay to each employer concerned an update to the notice that it sent pursuant to section 5.

O. C. 735-2005, s. 22.

DIVISION IV

FINAL PROVISION

23. This Regulation comes into force on the date of its publication in the *Gazette officielle du Québec*.

O. C. 735-2005, s. 23.