Newsletter

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General Transfer Agreements Between Supplemental Pension Plans

The right of a pension plan member to transfer his or her benefits to another pension plan was introduced in 1990 by chapter VII of the *Supplemental Pension Plans Act*. In fact, several plans had already granted that right before it became compulsory. In most cases, the right is exercised by making a transfer to a locked-in retirement account (LIRA). However, other transfer options are available, including a transfer to another supplemental pension plan, which is often made under a general transfer agreement.

This issue of **Newsletter** provides information on some aspects of general transfer agreements and is based on information requests frequently received by the Régie des rentes du Québec and on the Régie's supervisory activities.

What is a general transfer agreement?

First of all, it should be noted that a general transfer agreement is not absolutely necessary for the exercise of the transfer right granted in the *Act*. The right is granted to all members when they cease to be active plan members. A member can choose to transfer his or her benefits to a locked-in retirement account (LIRA), a life income fund (LIF), an annuity contract with an insurer or another supplemental pension plan (usually the one in which he or she becomes an active member). However, unlike the other options, a transfer to another supplemental pension plan is subject to a condition: the provisions of the receiving plan must allow that plan's administrator to accept sums from another plan. The initial plan must allow transfers to other supplemental pension plans but no supplemental pension plan is required by law to accept transfers.

If a plan sponsor wants to allow a member to transfer to the plan sums from other plans, the provisions of the receiving plan must provide for that right. They must also provide for the manner in which the additional pension benefits will be determined when a transfer is received. Basically, this type of transfer generally consists in transferring to the receiving plan the value of the member's benefits with interest that had been accumulated in the initial plan on the date on which the member's active membership ended (i.e., the termination benefit). The receiving plan grants the member additional pension benefits whose value is equal to the sum transferred, that is, the value of the termination benefit.

Although it is not a strict requirement for transfer transactions, some plan sponsors agree in writing on the rules applicable to transfers between their plans. For example, company A and company B agree that their respective pension plans will allow members who become inactive in one of the plans and active in the other to transfer their benefits from the former to the latter. The agreement may be of limited duration or may stipulate how the sum to be transferred and the resulting additional pension benefits will be determined. Such an arrangement is called a "general transfer agreement".

Does a general agreement require amendments to the plans?

To answer that question, it must be noted that there are 2 types of general agreements: one entails a change in member benefits or plan obligations and the other does not. Most general agreements are of the first type and therefore require that at least one of the plans be amended. Most of the time, all the affected plans must be amended.

Take the case of 2 plans (A and B) for which the sponsors have agreed that when a member of plan A becomes non-active and joins plan B, he or she can exercise the transfer right by transferring his or her benefits to plan B. For its part, plan B will increase the payable pension benefits by an amount corresponding to the amount transferred. In this example, the member's rights in plan A are not changed by the general agreement since a transfer right is provided for in the *Act* and the plan provisions probably refer to them without change. In addition, the pension benefits recognized under plan B correspond to the termination benefit. Moreover, the obligations under plan A have not been changed since the amount transferred to plan B is the same as would have been transferred to an LIRA or another supplemental pension plan. For those reasons, it is not necessary to amend plan A to give effect to the general agreement. As for plan B, the general agreement may require an amendment if the plan does not already provide that a member can transfer sums to it. If that provision is absent, the plan will have to be amended in order to give effect to the general agreement.

Furthermore, even where a general agreement does not change a plan's obligations or a member's benefits, the plan administrator will have to ensure that the statement of cessation of active membership indicates the names of all plans covered by a general agreement and to which the member can transfer benefits. This requirement is found in subparagraph *n* of paragraph 5 of section 58 of the *Regulation respecting supplemental pension plans*.

It should be noted that the *Act* is silent as to who may make a general transfer agreement (e.g., employers or administrators). Nevertheless, there are some rules to respect if the agreement necessitates a plan amendment. If an agreement is made by the administrators but the power to amend one of the plans is accorded only to the employer, only that employer can ultimately implement the general agreement. That would not be the case if, for example, the plan text provided that all plan amendments are made by the employer except for amendments intended to implement a general transfer agreement made by the pension committee, subject to any conditions in the plans provisions.

The following list, while not complete, includes a number of cases where a general transfer agreement necessitates an amendment to either the initial plan or the receiving plan. Since most general transfer agreements are bi-directional, it is usually necessary to amend both plans. In the list, the plan requiring amendment is indicated in brackets.

- The plan does not provide a right for the member to transfer to it a sum from another supplemental pension plan. [receiving plan]
- The general transfer agreement effectively changes the method for converting the transferred sum into additional pension benefits. [receiving plan]
- The general transfer agreement effectively grants the member benefits whose value is greater than the value of the termination benefit that otherwise would have been transferable to an LIRA. [initial plan and receiving plan]
- The general transfer agreement specifies the method for calculating the sum to be transferred to the receiving plan and that sum is different (greater or less than) the sum that would otherwise be available for transfer to an LIRA. [initial plan]
- The general transfer agreement itself was submitted to the Régie for registration and was later amended (e.g., changes in the assumptions to be used). [plan under which the agreement was registered]

What are the conditions for amendments required to implement a general transfer agreement?

Since they change some aspects of a member's rights and benefits or the plan's obligations, almost all general transfer agreements necessitate plan amendments. In fact, there is little reason to make a general transfer agreement that does not change a member's benefits or the plan's obligations. Where an agreement entails a plan amendment, the amendment must be made in the same way as any other amendment. Particularly, it must usually be the subject of a notice to the active members and of an application for registration pursuant to section 24 of the *Act*, and must be accompanied with the documents required under the *Act*. In most cases, an application must be made for all the plans affected by the agreement. Generally, a general transfer agreement will necessitate amendments to the plan provisions that concern benefits when employment or active membership ceases and those that concern benefits transfer or the calculation of retirement or death benefits, depending, of course, on the specific content of a particular plan's provisions.

For practical reasons, instead of amending a plan's provisions, an administrator sometimes submits the general transfer agreement itself to the Régie for registration in lieu of an amendment to the plan. Since the form of a plan text is not prescribed by the *Act*, it is the Régie's policy to accept such applications for the registration of amendments. However, it is strongly recommended to directly amend the plan's provisions rather than to have another document registered alongside the plan. A direct amendment to the plan can be limited to what is strictly necessary and drawn up using the same terminology as the plan text, which can often limit contradictions and interpretation problems. Submitting a general transfer agreement in lieu of a plan amendment means that any later change to the agreement, whether significant or not, will constitute an amendment to the plan and will have to be registered. Moreover, there can often be problems of concordance between the main plan text and the general transfer agreement.

Another approach, which could prove interesting from the administrative point of view, would be to integrate in the plan text, in advance, all the terms and conditions for general agreements. Then, each time a new agreement in conformity with those terms and conditions was made, the pension plan would only require an amendment to add the other plan's name to the plan's list of plans with which similar agreements were already in effect.

Can a general transfer agreement be used when an employee changes employment categories within a company?

In many large companies and in the municipal government sector, there are often distinct pension plans for each category of employment. For example, there may be a plan for salaried employees and another for hourly-paid employees or one for unionized and another for non-unionized employees. In such cases, an employee who changes employment categories ends his or her active membership in the plan of which he or she was a member. Then, he or she becomes a member of the plan corresponding to his or her new duties.

In addition to facilitating administrative procedures, it can often be advantageous for a member to transfer his or her benefits from the old plan to the new one. Quite often, where permitted under the plan, a transfer makes it possible to establish eligibility for the pension benefits provided for under the new plan by taking into account the years of membership in the old plan. Sometimes, the aggregate recognized service is taken into account for calculating pension benefits under the new plan (where that results in higher benefits). Such transfers can be made under a general transfer agreement between the plans involved.

Where that is the case, certain rules arising from the provisions of the *Act* must be followed:

- Although such transfers are usually more advantageous for the member, no such transfer can be made unless the member elects to exercise his or her transfer right. A transfer can be imposed on a member or group of members only following the division of a plan pursuant to chapter XII of the *Act*.

- If a member changes employment categories, he or she ceases to be an active plan member and must receive the statement prescribed in section 113 of the *Act*. The statement must contain the information indicated in section 58 of the *Regulation respecting supplemental pension plans*. Among the options available to the member, in addition to the possibility of leaving his or her benefits in the plan as a non-active member, the statement must indicate all the instruments to which a transfer can be made. The options must include the names of any plans covered by a general transfer agreement that are available to the member.

How is the amount to be transferred under a general transfer agreement determined?

The *Act* does not have any guidelines in that regard. Subject to the plan provisions, the parties to an agreement are free to agree on the rules to be applied. They may, for example, agree that the sum transferred will correspond to the actuarial liability determined on an on-going basis and specify a reference to use for the assumptions. Although no parameters are laid down, the actuary who makes a periodic valuation of the plan must make a valuation based on solvency. For that purpose, section 143 of the *Act* requires him or her to consider the effect of any general agreement to which the plan is subject. If the terms of the agreement could affect the plan's solvency, the effects can, in some cases, be limited by the recommendation that the actuary may be required to make.

It is also important to point out that the sum transferred from one pension fund to another does not necessarily affect the benefits of a member who is covered by a general transfer agreement. Section 106 of the *Act* provides that the benefits granted to a member cannot be less than the termination benefit to which he or she would have been entitled for the purpose of making a transfer to an LIRA. Thus, even if a lesser amount or indeed no amount at all is transferred from one plan to the other and all benefits due under the initial plan are deemed to

be paid in full by the transfer, the member's mandated minimum benefit will be preserved. Conversely, even if an amount greater than the termination benefit is transferred, nothing requires the receiving plan to entitle the member to benefits of such level that, were he or she to later leave the receiving plan, the value of those benefits would exceed the sum received from the initial plan. In other words, the *Act* is respected so long as a member's benefits are not less than the termination benefit under the initial plan.

Are there specific rules where there is a transfer to a final pay plan or to an average best earnings plan?

Section 106 of the *Act* requires that a member's benefits that are the result of a transfer to a receiving plan must be at least equal to the value of the benefits that the member would have been able to transfer from the initial plan to, for example, an LIRA. The *Act* also provides that the value must be calculated on the basis of the assumptions that were submitted to the Régie pursuant to section 61 to the *Act*. It must be noted that for almost all plans, such assumptions suppose that the member's pay will not increase over time. Where that is indeed the case and since the member's active membership ends, the test must be based on an assumption which supposes a zero increase in pay.

To better understand the extent of these measures, it may be useful to look at an example. Suppose that Ms. Côté stops working for company A and begins working for company B. Company A has a career earnings plan and company B has a final pay plan. There is a general transfer agreement between the sponsors of the 2 plans. Because her membership in plan A ended, Ms. Côté could have transferred 24 000 $ to an LIRA. That amount takes into account all the pay earned during her career until her departure but does not include any projected pay thereafter.

Ms. Côté opts instead to transfer her benefits to plan B under the general transfer agreement.

The agreement allows plan B to credit Ms. Côté with a portion of her years of service with company A. In exchange for assuming that obligation, the administrator of plan B asks for a transfer of 40 000 $. Under the general transfer agreement and the provisions of the 2 pension plans involved, that amount was based on the assumptions used to periodically value the actuarial liability of plan A on an on-going basis. To determine the number of years of service to credit, the administrator of plan B takes into consideration the amount received and the characteristics of the pension that will be eventually paid. Since that pension will be based on the progression of Ms. Côté's pay, he asks his actuary to make an assumption on the progression of her pay. The actuary estimates that a pension of 9 000 $ could be paid, which would subsequently be based on the progression of Ms. Côté's salary.

However, section 106 requires that the Ms. Côté's benefits must be at least equal to the 24 000 $ that she would have been able to transfer to an LIRA. When the transfer was made, it was determined, on the basis of the assumptions referred to in section 61 (with no pay progression), that a fixed pension of 12 000 $ would have to be granted to the member. As a result, Ms. Côté's benefits must, at all times, be determined so that the resulting pension under plan B will not be less than the pension whose value was 24 000 $ at the time of the transfer, that is, 12 000 $. If this provision of the *Act* did not exist, and she left plan B shortly after becoming a member, Ms. Côté would have received benefits corresponding to the value of a 9 000 $ pension, that is, around 18 000 $, which would be quite a bit less than what she would have had under plan A. The test to determine whether the provisions of section 106 are met can be made either by determining a minimum pension at the time of the transfer, as in the preceding example, or by comparing the value

of the benefits resulting from the transfer (determined as at the date on which a pension benefit is vested) with the accrued value with interest of the termination benefit referred to in section 106 (i.e., in the preceding example, a sum of 24 000 $ plus interest).

Additional information

The Régie has published other information on general transfer agreements. Additional information on the interpretation of the provisions of the *Act* related to this subject can be found in *Loi sur les régimes complémentaires de retraite : annotations et commentaires* (see pp. 102-1 to 106-3, 143-1, 143-2 and 194-6). Published in French only, it can be ordered from the Régie.

Please note that, Bill 102, *An Act to amend the Supplemental Pension Plans Act*, which was introduced in the Québec National Assembly on 16 March 2000, was still awaiting passage when this **Newsletter** was prepared. The Bill includes provisions to eliminate the obligation to submit general transfer agreements to the Régie. It maintains, however, the obligation to have required plan amendments registered.

The following issues of **Newsletter** are still in force: No. 7 (pp. 1 to 5) and Nos. 8 to 12. Some of the information in **Newsletter**, No. 3, January 1988, which covers plan conversion may still apply. However, since it was prepared with reference to the former *Act respecting supplemental pension plans*, you are strongly encouraged to contact the Régie so as to be aware of the current conditions before undertaking a plan conversion.

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