

Legal update

Bill 141: the most significant changes for Quebec's financial sector in decades

October 2017

Insurance

Financial institutions

General context

On October 5, 2017, Quebec Minister of Finance, Mr. Carlos Leitão (Minister), tabled in the National Assembly Bill 141 (Bill) which will have significant effects on all institutions and intermediaries active in Quebec's financial sector. For a number of years, our institutions have been governed by a legislative framework, several components of which are outdated.

Some of our laws have not been revised significantly in over 30 years, such as the *Act respecting trust companies and savings companies*. Others, such as the *Act respecting the distribution of financial products and services*, are less than 20 years old, but the evolution of distribution channels and technological methods, particularly the Internet, make it critical that they be modernized in order to keep up with the considerable developments in this industry. Others, such as the *Act respecting financial services cooperatives*, which now governs Desjardins Group, or the *Act respecting insurance*, must also be updated in order that the financial institutions that they govern have all the necessary tools to develop in a highly competitive environment as well as a governance framework compliant with best practices. Finally, other significant laws in the financial sector, such as the *Securities Act* and the *Derivatives Act*, although they are regularly updated, are also amended to enhance their scope.

Several laws, specifically those governing Quebec financial institutions (financial services cooperatives, trust companies, savings companies and insurance companies) were rejuvenated in terms of the operating rules of the organizations that they govern. The Bill also entails a very large number of amendments to other related provisions in the financial sector, such as the *Civil Code of Quebec* and the *Real Estate Brokerage Act*. In total, more than 60 laws have been amended or replaced by this Bill covering some 500 pages.

Overview of the proposed legislative amendments

Below are certain highlights from the Bill.

The Insurers Act

The Bill is creating the *Insurers Act*, to replace the *Act respecting insurance*. This new law proposes more modern supervision of the activities of authorized Quebec insurers. It includes rules related to sound management practices that must be adopted by an insurer with the objective of maintaining adequate assets to meet its liabilities and adequate capital to ensure its sustainability. In particular, it provides that an insurer must adopt a formal investment

policy approved by its board of directors. The rules of governance applicable to insurers are confirmed and reinforced, notably by the obligation to have in place an audit committee and an ethics committee comprised of a majority of independent directors. The audit committee is responsible for reviewing the financial statements before they are submitted to the board of directors. The ethics committee is responsible for adopting and applying rules of ethics concerning in particular the conduct of directors and officers of the insurer and the oversight of relationships with interested persons.

The role of supervising and controlling the insurer's activities is assigned to the Autorité des marchés financiers (AMF), which is also responsible for issuing guidelines in order to guide the insurer in interpreting the law. The AMF's authorization is required to carry on insurer activities in Quebec and only insurers that have at least \$5,000,000 in capital may obtain such authorization. An insurer must furthermore prepare an annual statement of the position of its affairs to the AMF. The AMF may decide to review and potentially revoke or suspend its authorization to carry on activities.

Act respecting financial services cooperatives

The Bill amends the *Act respecting financial services cooperatives* in order to add in particular a chapter concerning Desjardins Group, by replacing the *Act respecting the Mouvement Desjardins*. Guy Cormier, president and chief executive officer of Desjardins Group, said that he was satisfied with the Bill, which makes, in his opinion, [translation] "Quebec's legislative framework one of the most modern in the world¹."

The objective of the changes is to adapt to the new rules introduced internationally following the 2008 financial crisis, by reinforcing, for example, the powers of intervention of the security fund intended to protect creditors. The Bill also specifies a financial services cooperative's conditions of control and provides rules regarding capital shares and investment shares of financial services cooperatives.

Act respecting trust companies and savings companies

The *Act respecting trust companies and savings companies* will be replaced by a new act bearing the same name. This new act introduces a modern framework regarding trust companies and savings companies that is equivalent to the one set out in the previously discussed *Insurers Act*.

Act respecting the distribution of financial products and services

Of all the acts amended by the Bill, the *Act respecting the distribution of financial products and services* (ADFPS) is arguably the one that draws the most media attention. In fact, with very few amendments, the Bill introduces major changes to this act that are likely to have a significant impact on the insurance industry.

First and foremost, the Bill addresses a measure already announced by the Minister at the time of his March 2016 budget, that is, to abolish the *Chambre de la sécurité financière* and the *Chambre de l'assurance de dommages*. These two non-governmental self-regulatory organizations responsible for providing discipline and supervision of insurance representatives were regulated by the ADFPS, but were until now, autonomous.

Some criticized the former governance structure for creating confusion for the consumer as a result of a certain overlapping between responsibilities of these two organizations and those of the AMF. Supporters of the one-stop shop won their case because the two bodies will now be replaced by the AMF, which will oversee their responsibilities. The staff of the two organizations will be absorbed by the latter to conserve their expertise.

Among the amendments made to the ADFPS, some are intended to give effect to mortgage brokers' attachment to the AMF, as discussed below, with respect to the *Real Estate Brokerage Act*. Others amend the rules related to the ownership of the insurance brokerage firm.

The Bill does not amend per se the proportion of shares conferring a voting right that an insurer or another financial institution may hold in a broker, currently 20%, but the changes proposed to several relevant definitions are likely to have an impact on the activities of financial institutions in this industry. For example, prohibitions have been amended to consider the fact that certain distribution methods no longer require the intervention of a broker and that they will also apply to general insurance brokerage firms even if they offer products without the intermediary of a natural person. Also, during its March 2017 budget, the Minister announced that he would consider separately the issue of the usefulness of maintaining the 20% limit. It is therefore still possible that this limit will be subject to further amendments.

The Bill also introduces some examples of easing intended to facilitate the distribution of certain products by the Internet. These are not big changes but rather several adjustments made in various areas. For example, a firm is recognized for being able to offer products and services in a discipline without the intermediary of a natural person once he employs a representative who can practice in this discipline. The terms of the information and documents to provide in this case will be specified later by regulation. However, the amendments made to the distribution without a representative arrangement will require the distributor to act through the intermediary of a natural person. Certain choices have therefore been made between the possibilities offered by the technology and the framework and supervision of the activities in question.

Finally, there are also certain other amendments related to the Internet such as a new provision ensuring that a legal person who, without acting as a firm, earns a commission or other payment based on the sale of financial products or the provision of financial services must be registered with the AMF. From the time of registration, it is, for purposes of the application of the ADFPS, considered to be acting as a firm within the discipline in which its products and services are offered.

Real Estate Brokerage Act

This act, whereby the Organisme d'autoréglementation du courtage immobilier du Québec (OACIQ) governs both real estate brokers and mortgage brokers, will be stripped of the responsibilities relating to mortgage brokers, of which the supervision will be entrusted to the AMF and that will now be covered by the ADFPS. This operational reorganization is accompanied by a readjustment in the governance of the OACIQ, in which the Minister will appoint several directors and will stipulate contracts and forms related to brokerage transactions.

Furthermore, because real estate transactions have significantly changed in the age of technological advancements, the OACIQ had brought to the courts several claims in recent years through which it was attempting to have acknowledged as brokerage subject to the act certain activities in support of the purchasers, tenants, sellers or lessors. The proposed amendments in the act entail in this regard a revised definition of what constitutes a real estate brokerage contract, but it requires, for a person to be subject to the act, that a party to a contract be "asked to act as its intermediary in dealing with interested persons" (purchasers, vendors, lessors or tenants). The various services offered to individuals intent on transacting without an intermediary will now be required to pass this updated test.

Deposit Insurance Act

The Bill introduces many amendments to the *Deposit Insurance Act*, now called the *Deposit Institutions and Deposit Protection Act*. It provides in particular for the adoption, by any authorized deposit institution, of sound commercial practices, prudent management measures, appropriate governance practices as well as an investment policy and ethical rules. The board of directors of a deposit institution must be comprised of a minimum of seven members and include an audit committee and an ethics committee.

Act respecting the Autorité des marchés financiers

The *Act respecting the Autorité des marchés financiers* that becomes the *Act respecting the regulation of the financial sector* will include provisions concerning persons who disclose to the AMF any information likely to demonstrate that a failure to comply with an act the administration of which is entrusted to the AMF has been committed, is about to be committed or that a person has been asked to commit such a violation. The act now relieves professionals (with the

exception of notaries and lawyers) of their obligation to professional secrecy and will permit them to denounce the dealings of their clients in spite of their professional obligations.

Like other notable amendments, there is the establishment of a "Comité consultatif des consommateurs de produits et utilisateurs de services financiers" whose mission would be to communicate consumer opinion to the AMF. In addition, the Act will provide for changes concerning the institution, jurisdiction, procedure, members and business conduct of the Financial Markets Administrative Tribunal. The powers of the Financial Markets Administrative Tribunal will be broadened and adapted as a result of the abolishment of the *Chambre de la sécurité financière* and the *Chambre de l'assurance de dommages*.

Civil Code of Quebec – funeral insurance

For more than 40 years, the insurance contract through which a person, for a premium, undertakes to pay the funeral expenses directly to a funeral home following a person's death, has been prohibited in Quebec. The historical reasons that have led to this prohibition have long since passed, but while insurers offer products of this nature everywhere else in Canada and in most industrialized countries, it was not possible to do so in Quebec where only trust deposit products authorized by the *Act respecting prearranged funeral services and sepultures* are available for the consumer wishing to provide for their funeral expenses.

With the proposed changes, an insurer will be allowed to make a payment to the funeral home, following the insured's death, to cover the costs of the goods or services stipulated in a prearranged funeral services contract or the associated prepurchased sepulture contract. This new change will provide more flexibility both to consumers and funeral companies in the planning of these arrangements.

Automobile Insurance Act

The Bill aims to broaden certain terms specifying how the AMF is to communicate information concerning the automobile driving experience of insured persons to an authorized insurer making such a request, only for purposes of classification and risk rating, when an automobile insurance policy is obtained or renewed. Under the new *Automobile Insurance Act*, the AMF could also sanction with a fine any authorized insurer who fails to submit a copy of the rates manual or to provide any justification on one or more elements of the rates manual following a request by the AMF.

Money-Services Businesses Act

Certain amendments have been proposed to the *Money-Services Businesses Act* that will enable the AMF to obtain from the Sûreté du Québec more regularly and, at the latest, every three years, new security clearance reports on the holders of business licences of any money-services business in order to determine if there are grounds for suspending or revoking these licences.

Derivatives Act and Securities Act

Common amendments to these two Acts

The proposed amendments to the *Derivatives Act* (DA) and to the *Securities Act* (SA) stipulate more detailed indications with respect to the processing of complaints filed by clients of dealers and advisors. In addition, in both cases, a freeze order, unless otherwise provided in the order, will be in effect for 12 months instead of 120 days, except if revoked or amended by the Financial Services Administrative Tribunal. The amendments proposed to the DA and to the SA also provide that the Financial Services Administrative Tribunal must, in certain circumstances, approve the terms of administration and distribution, by the AMF, of amounts remitted to it during the execution of an order of the Tribunal because of a failure to comply with the act which resulted in a loss for other persons.

Amendments to the DA

Among the amendments proposed specifically to the DA, it is provided that derivatives trading platforms will be added between regulated entities that must be recognized to carry on their activities in Quebec. Another amendment to be noted is the proposed scope of the AMF's power to inspect the affairs of a person to verify compliance with the provisions applicable to the person with respect to over-the-counter derivatives under the DA.

Amendments to the SA

Several amendments have been proposed to the SA. For example, the fact of prescribing restrictions on sharing the commissions received by a mutual fund dealer or a scholarship plan dealer, in a manner similar to the restrictions prescribed for a firm in accordance with the ADFPS. It should be pointed out that distributions of securities made by Quebec issuers outside of Quebec contrary to section 12 of the SA will be subject to higher fines and every person who makes a distribution of securities in contravention of section 12 of the SA could be liable to imprisonment. Finally, it is proposed that the request for authorization of an action for damages in the case of civil liability in a secondary market, filed in accordance with the SA, suspends prescription of this action.

Conclusion

At the time of drafting, the Minister announced that the Bill would be subject to specific consultations, but the details and dates of these consultations are not yet known.

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Footnote

¹ Press release dated October 5, 2017 entitled "Desjardins Group applauds introduction of bill to reform Quebec's financial sector, online: https://blogues.desjardins.com/press_release/2017/10/desjardins-group-applauds-introduction-of-bill-to-reform-quebecs-financial-sector.php.

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