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Comprehensive reform of the rules governing the regulation and operations in the Québec financial sector

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On October 5, 2017, Québec's Minister of Finance, Carlos J. Leitão, has tabled Bill 141 in Québec's National Assembly. The Bill, which is 470 pages long and includes some 750 sections, is entitled *An Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions.* It proposes a major overhaul of the rules governing the operation of deposit-taking institutions and insurance companies, as well as the distribution of financial products and services ("FPS") in the province.

The Bill proposes amendments to the following laws:

Act respecting insurance (repealed)
Professional Code
Act respecting trust companies and savings companies (replaced)
Act respecting financial services cooperatives
Act respecting the Mouvement Desjardins (repealed)
Deposit Insurance Act (renamed *Deposit Institutions and Deposit Protection Act*)
Derivatives Act
Money-Services Businesses Act
Automobile Insurance Act
Act respecting the Autorité des marchés financiers (renamed *Act respecting the regulation of the financial sector*)
Act respecting the distribution of financial products and services
Real Estate Brokerage Act
Insurers Act (enacted)
Securities Act

Based on the Minister's speech unveiling the Bill, the following is a summary of the 13 main categories of measures provided for in that draft legislation:

Insurance — The *Insurers Act* is proposed as a replacement for the Act respecting insurance. It contains provisions governing the supervision and control of insurance business and of the activities of authorized (former permit holding) Québec insurers, as well asprovisions governing the constitution, operation and dissolution of Québec-incorporated insurers. The new *Insurers Act* also updates the rules applicable to the insurance activities of self-regulatory organizations (**"SROs"**), including professional orders.

Financial services cooperatives — The Bill amends the *Act respecting financial services cooperatives* (essentially, credit unions which are members of the *Groupe Coopératif Desjardins*) to specify, among other things, rules relating to the organization and functioning of such cooperatives. The Bill adds a chapter concerning the *Groupe coopératif Desjardins* in replacement of the Act

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respecting the Mouvement Desjardins, which will be repealed.

Deposit insurance — The Bill amends the *Deposit Insurance Act* and puts in place a new framework to supervise and control the deposit-taking business and authorized deposit-taking institutions in Québec. It includes provisions allowing for the resolution of problems arising from the failure of such an institution when affiliated to a cooperative group. The title of that Act is also changed to reflect the amendments made to it.

Trust companies — The *Act respecting trust companies and savings companies* is replaced by a new legislation bearing the same title, but which redefines the regulatory framework governing those kinds of companies and their business. This framework is consistent with the new legislation to be applied to insurance companies and deposit-taking institutions.

Real estate brokerage — The *Act respecting real estate brokerage* is to be amended to, among other things, define the concept of real estate brokerage contract, and to transfer to the Autorité des marches financiers (**“AMF”**) the supervision and control of mortgage brokers in the province.

Financial products and services — The Bill amends The *Act respecting the distribution of financial products and services* to transfer to the AMF and the Financial Markets Administrative Tribunal (**"FMAT"**) the SRO responsibilities currently entrusted to the Chambre de la sécurité financière and the Chambre de l’assurance de dommages. It also proposes a set of amendments aimed at facilitating the online offering and distribution of FPS.

Act respecting the AMF — The Bill amends the *Act respecting the Autorité des marchés financiers* by introducing provisions to protect whistleblowers who denounce regulatory breaches of third parties to the AMF, to establish a committee tasked with taking submissions from consumers of FPS, and to structure the FMAT in a way similar to other provincial administrative tribunals, such as the Administrative Tribunal of Québec. The *Act respecting the AMF* is to be renamed an Act respecting the regulation of the financial sector.

Funeral expenses insurance — The Bill amends the *Civil Code of Québec* to permit funeral expense insurance contracts to be entered into. It also modifies the *Act respecting prearranged funeral services and sepultures*, to provide for a more proper regulation of such contracts.

Automobile insurance — The Bill amends the *Automobile Insurance Act* to specify how information relating to the acquisition or renewal of automobile insurance is to be filed.

Money services — The Bill amends the *Money-Services Businesses A*ct to provide for periodic checks (every three years) to be conducted on money-services businesses by the competent local police.

Derivatives — The Bill adds derivatives trading platforms to the entities regulated under the *Derivatives Act.*

Securities — The Bill amends the *Securities Act* to, among other things, replace the definition of "*non-redeemable investment fund*", prescribe restrictions on sharing commissions for certain dealers, and provide for the suspension of prescription when an application for authorization of an action for damages is filed under that Act.

Legislation administered by the AMF — Finally, the Bill amends the laws administered by the AMF (listed in Schedule I to the *Act respecting the Autorité des marchés financiers*) to prescribe the duration of freeze orders obtainable under those laws and to prescribe the terms of administration and distribution of amounts remitted to the AMF pursuant to a disgorgement order issued thereunder.

Bill 141 thus proposes wide-ranging reforms. It embodies measures which:

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amount to a major overhaul of certain financial laws (Desjardins' financial services cooperatives, trust companies, deposit insurance);
aim at providing a legal basis for operations that are either currently unregulated or unauthorized by law (e.g., the offering or distribution of FPS online);
incorporate certain supranational standards into Québec's regulatory framework (e.g., resolution / orderly winding up of unstable systemically important financial institutions);
redeploy the exercise of regulatory, supervisory and enforcement / disciplinary functions in the financial sector; and
enact numerous new specific rules, particularly in the field of insurance (reciprocal insurance unions; exemption from authorization (permits) respecting suppliers of insurance-like extended warranty products; commercial practices; etc.).

The scope is far-reaching for our clients operating in the Québec financial sector, and those who wish to efficiently seize the opportunities offered by the new rules that will govern the Québec's financial marketplace.

They would now want:

to learn more about the measures of the Bill and the way they may affect them, to position themselves competitively or adjust their ongoing projects in preparation for what is to come;
to consult to knowledgeably define new strategies and be able to effectively implement them, in compliance with the new rules;
to participate, separately or jointly with others stakeholders, to the consultations that the Minister of Finance has announced would be held on the Bill by a parliamentary committee, to present their views and propose enhancements to its provisions.

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