ADOPTION OF FINANCIAL SECTOR REFORM GOES AHEAD IN QUÉBEC, BUT GOVERNMENT BACKTRACKS ON CERTAIN PROPOSED CHANGES IN THE INSURANCE SECTOR

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We previously reported on Bills 141 and 150 - see our earlier bulletins on Bill 150 and 141

On June 13, 2018, Bill 141, now the Act *mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions* (the "**Financial Sector Reform Act**") received assent.

The Financial Sector Reform Act brings about significant changes to the insurance sector and regulation of insurers and insurance brokers, financial service cooperatives, deposit institutions, trust and savings companies, real estate and mortgage brokerages, money-services businesses and more. As a result of the adoption of the Financial Sector Reform Act, several key pieces of legislation are amended or replaced entirely.

This bulletin focuses on the changes to the insurance and insurance brokerage sectors.

Background

As previously reported, as part of its announced reform of the financial sector, the Government of Québec (the "**Government**") introduced two bills, Bill 150 and Bill 141 in the fall of 2017.

At the time, both Bills contained provisions aimed at reforming the insurance and insurance brokerage sectors. During the legislative review and adoption process, all provisions related to insurance or insurance brokerage that were initially included in Bill 150 were removed. Some provisions were instead transferred into the final version of Bill 141, while others were abandoned altogether.

As a result, the Financial Sector Reform Act is a watered-down version of the initially announced reform. For instance,

- parts of the reform of the "20% rule"[1], the damage were abandoned. Indeed, following a public consultation held in 2017, the Government had announced that it was inclined to extend the rule to the insurance of persons sector. Such a provision was never introduced in either Bull 150 or Bill 141. *Changes*

in relation to the "20% rule" that do result from the Financial Sector Reform Act are detailed below.

- the controversial abolition of the *Chambre de la sécurité financière* and the *Chambre de l'assurance de dommages,* whose respective industry oversight mandates were to be transferred to the Autorité des Marchés Financiers (the "**AMF**") has been abandoned due to strong industry backlash and concern over consumer protection.

Nevertheless, there remain several significant elements of reform in the Financial Sector Reform Act.

Insurers Act

The Financial Sector Reform Act enacts the *Insurers Act* which replaces the Act respecting insurance.

Like the Act respecting insurance, the Insurers Act applies to the supervision and control of insurance businesses and of the activities of authorized insurers; in particular, their insurance and other financial institution activities.

In addition, the *Insurers Act* supplements existing provisions regarding the constitution, operation, dissolution and liquidation of Québec insurers and, if they have an insurance fund, to that fund.

It also assigns responsibility for the supervision and control of insurance activities to the AMF, the regulatory body charged with overseeing financial markets and products in Québec. As such, the AMF will have the authority to issue instructions, guidelines and orders, adopt conservatory measures, request injunctions, intervene in proceedings relating to the administration or enforcement of that Act, and cancel contracts or suspend their performance. Lastly, the Insurers Act sets out prohibitions, monetary administrative penalties and penal provisions.

Act Respecting the Distribution of Financial Products and Services

The most significant elements of change for the industry come under the Act Respecting the Distribution of Financial Products and Services (the "**Distribution Act**").

As announced, and after much public and political debate, especially coming from industry groups and consumer protection advocates, the Government has chosen to go ahead with the following changes:

Sale of insurance online without a physical intermediary

One of the Government's stated objectives in the reform of the financial services sector was to open up these industries to new technologies, namely online platforms. The Government was forced to specifically address the sale of insurance products online (i.e., without the involvement of a licensed broker or sales representative) because certain insurers had already started using the practice, benefiting from the legislative vacuum existing

until now.

Without much of a roadmap for governing online sales, the amended Distribution Act now provides that “a firm may offer products and services in a given sector without the intermediary of a natural person. However, it must take the necessary steps to ensure that representatives of its own interact, in sufficient time, with clients who express the need to interact with a representative; the firm must also inform its clients that such representatives are available.”

Beyond permitting the sale of insurance without the intermediary of a natural person, the amended Distribution Act does not offer many details as to exactly how the process might be regulated. The Government is expected to adopt separate regulations to that end.

The articles of the Financial Sector Reform Act which amend the Distribution Act regarding the sale of insurance without the intermediary of a natural person are set to come into force on June 13, 2019.

Independence of insurance brokers

In an effort to ensure greater independence of insurance brokers from insurers and other financial institutions, the Distribution Act has been amended to specify that damage insurance brokers must, when offering certain insurance products to a client, be able to obtain quotes from at least three insurers who do not belong to the same financial group.

These brokers will have to maintain information and documentation allowing them to prove that they made “every effort” to comply with this new requirement. This new requirement only pertains to damage insurance products intended to meet personal, family or household insurance needs. It does not, for example, apply to commercial insurance.

Brokers not in a position to comply with this new requirement will lose their “broker” designation and will be required to register as “agents”, a new designation created under the amended Distribution Act for those “brokers” that are tied to less than three insurers.

In addition, since the “20% rule” was not abolished under this reform, damage insurance firms will not be able to register as brokerage firms if a financial institution or a financial group or a legal person affiliated with it holds an interest in the firm that is equal to or greater than 20%.

There have not been clear indications from either the Government or the AMF yet as to the timeline and/or deadline for damage insurance firms to modify their AMF registration to either “brokerage firm” or “agency”.

Regulation of Mortgage brokerage

The Real Estate Brokerage Act is amended to include a definition of "real estate brokerage contract", which was not previously defined.

The Financial Sector Reform Act also transfers the supervision and control of mortgage brokerages to the AMF, and modifies the composition of, and the rules for appointing members to, the board of directors of the *Organisme d'autoréglementation du courtage immobilier du Québec* (real estate brokerage self-regulating body), and the term of office of the members of the discipline committee.

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[1] The 20% rule is found in ss. 147 and following of the Act respecting the distribution of financial products and services and mandates that no insurer can hold more than a 20% interest in any general insurance brokerage firm.

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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