MUCH AWAITED BILL 141 PROMISES TO SHAKE UP LEGISLATION REGULATING INSURANCE, FINANCIAL SERVICES AND REAL ESTATE AND MORTGAGE BROKERS IN QUEBEC

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On October 5th, 2017, Quebec Finance Minister Carlos J. Leitao introduced Bill 141 titled *An Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions* (the "**Bill**").

The omnibus Bill is an enormous 472 pages and proposes major reform for the damage insurance, persons insurance, financial services and real estate and mortgage brokerage sectors in Quebec.

An announced reform

It has been some time since the Quebec Government announced its intention to reform these key economic sectors. The Bill, which has been in the works since 2013 and was finally announced in the 2017-2018 Quebec Economic Plan[1], suffered several setbacks before being introduced earlier this month. The introduction of the Bill has been received with an expected mix of applause and criticism from those in the affected industries that feel they stand to gain or lose.

As stated in the Bill, the proposed amendments to existing laws are aimed mainly at (i) strengthening consumer protection while (ii) allowing financial institutions and market intermediaries to adapt their products and practices to new technologies.

The Bill, if it becomes law, has the potential to significantly impact the day-to-day operations of many organizations and professionals in the insurance, financial services and real estate and mortgage broker industries.

Overview: a reform centered around modernisation and consumer protection

a) Legislative shuffle

This Bill proposes a reform of the laws governing the financial sector in Quebec. As a result, several key pieces of legislation will be amended or replaced entirely.

Some of the key legislative changes include the enactment of the ***Insurers Act*** to replace the Act respecting insurance. The Insurers Act contains provisions governing the supervision and control of the insurance sector and the activities of insurers authorized to carry on business in Quebec. Of note, the *Insurers Act* will allow insurers to sell their products without the intervention of a physical intermediary, opening the door to the sale of insurance products entirely online.

The Bill also amends the ***Real Estate Brokerage Act*** to: (i) define real estate brokerage contracts, (ii) transfer supervision and control of mortgage brokers to the Autorité des Marchés Financiers ("**AMF**"), and (iii) modify the composition and 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).

The Bill amends the ***Act respecting the distribution of financial products and services***. Most significantly, (i) the supervision of mortgage broker activities will now fall under the scope of this law, (ii) firms will be allowed to offer financial products and services by modern technological means (i.e. online), (iii) the *Chambre de la sécurité financière and the Chambre de l'assurance de dommages will be abolished,* and (iv) the AMF will be entrusted with the responsibility of controlling representative activities, including ethics and training, and restricted certificates for distribution without a representative will be eliminated.

The *Act respecting the Autorité des marchés financiers* becomes the **Act respecting the regulation of the financial sector**. There is a serious effort made in the Bill to centralize all financial services regulatory and enforcement efforts under a single regulator, the AMF. As a result, the AMF's mandate will be expanded to include industries it did not previously regulate, such as mortgage brokering. The legislation also includes several new measures to strengthen consumer protection.

Other miscellaneous amendments are included in the Bill. For instance, the ***Quebec Civil Code*** is amended to allow funeral insurance contracts. The ***Automobile Insurance Act*** is amended to regulate the transmission of information to an insurer about an insured person's driving experience when that person seeks to obtain automobile insurance.

In total, 60 pieces of legislation will be amended by this Bill.

b) Key policy changes

- **Abolition of the Chambre de la sécurité financière ("CSF") and the Chambre de l'assurance de dommages ("ChAD") and strengthening of the AMF's oversight power**

One of the Government's goals with the Bill is to harmonize the regulatory oversight of the insurance and financial services industries by creating a one-stop shop for regulation and implementation.

There was some speculation that the two chambers, the CSF overseeing the group insurance, insurance of persons and financial planning services industries on the one hand, and the ChAD overseeing the damage insurance industry on the other hand, might be abolished as part of the reform.

The CSF and the ChAD, each responsible for the ethics, training and discipline of its members, had been criticized in recent years for their lack of rigor. Despite warnings that the abolition of the two chambers would put consumers at risk, both are now set to be abolished and their activities absorbed by the AMF.

- **Sale of insurance and financial products online**

The legislative innovation to permit sales of insurance products online came as no surprise but is nonetheless raising some concern from a consumer protection perspective.

One of the Government's stated objectives was to open up these financial services 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 have already started using the practice, benefiting from the legislative vacuum existing at the time.

Without much of a roadmap for governing online sales, the Bill articulates in very few articles, that firms will now be able to offer products and services "without the intermediary of a natural person".[2] Eligible firms will have to be present in Quebec and hold an appropriate license from the AMF, and consumers will have a 10 day cooling off period in which they may cancel policies contracted without an intermediary. At this stage, the Bill does not offer any more details on the question.

Notably, the Bill does not limit the types of products that may be sold online, which is a cause of concern for some. The concern stems from the fact that while some products, like home or car insurance, have become fairly standardized; other products like life insurance are much more complex and may be unsuited for sale without appropriate guidance.

- **Real estate and mortgage brokerage**

The regulation of mortgage brokerages will be taken out of the *Real Estate Brokerage Act* and inserted into the *Act respecting the distribution of financial products and services.* The Government now considers mortgages to be "financial products". As such, the AMF will overtake the training, ethics and oversight of mortgage brokers.

The regulation of real estate brokers will remain under the *Real Estate Brokerage Act*. Nonetheless, the Bill also tightens various oversight measures within the *Real Estate Brokerage Act*, mainly as it pertains to the *Organisme d'autoréglementation du courtage immobilier du Québec's (OACIQ)* mandate.

- **Consumer protection**

One of the major concerns throughout this reform will be the manner in which consumer protection issues are addressed. There has already been a public tug-of-war between the Government and different industry stakeholders, each claiming that the reform would make consumers better or worse.

Nevertheless, the Bill proposes several measures aimed concretely at improving consumer protection in the insurance and financial services industries. For instance, the Bill will broaden the eligibility standards for compensation by the AMF Financial services compensation fund and put in place an advisory committee made up of consumers of financial services.

- **Strengthening the Financial Markets Administrative Tribunal**

The Bill also provides for a reinforced role and status of the Financial Markets Administrative Tribunal, where all disputes arising out the AMF's new mandate will now be heard.

c) Intentionally left-out

- **Revision of insurance brokers independence and ownership rules**

Following a consultation on the famous "20% rule"[3] earlier this year, the Government promised to review the application of this rule and other conflict of interest rules in general affecting the insurance brokerage industry. During the public consultation held last spring, the Government asked for feedback as to whether the rule was still necessary and whether it remained the best way to manage conflicts of interest and protect consumers.

Interestingly enough, in the wake of the public consultation, certain insurers publicly spoke out in favor of keeping the 20% ownership rule intact. While it was expected that the Government would address this issue as part of the present reform effort, the Finance Minister has announced that the question will be addressed at a later time.

Conclusion

Although the content of the Bill does not result in many surprises, the legislative changes that it encompasses are likely to bring significant change to the industries concerned. It remains to be seen how the marketplace will respond to the explicit acceptance of online sales of insurance and financial products without an intermediary -- that is, whether it creates new business opportunities and whether this is offset by consumers who exercise the right of rescission.

It also remains to be seen whether the AMF can effectively centralize and strengthen oversight of the whole industry all at once.

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[1] The Quebec Economic Plan – March 2017, available in full here; The Quebec Economic Plan, Additional Information 2017-2018, available in full here, p D.4.
[2] See s. 487 on p. 380.
[3] 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 firms.

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.