

Regulation respecting the application of the Deposit Insurance Act (Replacement)

Notice is hereby given by the *Autorité des marchés financiers* (the "Authority") that the draft *Regulation respecting the application of the Deposit Insurance Act*, which will replace the Regulation currently in force, is being published for consultation.

The Regulation may not be made by the Authority and submitted to the Minister of Finance for approval until 30 days have elapsed since this publication. The Minister may approve the Regulation with or without amendment.

Purpose of draft Regulation

This draft Regulation, which is a revision of the *Regulation respecting the application of the Deposit Insurance Act* currently in force, seeks harmonization with the various amendments made to the *Deposit Insurance Act* by *An Act to amend various legislative provisions principally to tighten the regulation of the financial sector*.ⁱ

The main revisions were as follows:

- Addition of a separate guarantee for deposits received by an institution where the funds are used to pay the balance owing by a hypothecary debtor with respect to property taxes on hypothecated property;
- Clarification of the wording of the sections related to the separate guarantee for certain deposits;
- Increase in the minimum premium payable by a registered institution from \$100 to \$5,000 to achieve harmonization with the premiums payable under the Canada Deposit Insurance Act;
- Addition of the following statement to any document attesting to the receipt of funds that do not constitute a deposit solely because they are payable in foreign currency: "The funds of which receipt is evidenced by this document do not constitute a guaranteed deposit within the meaning of the Deposit Insurance Act.";
- Deletion of the schedules (forms) contained in the *Regulation respecting the application of the Deposit Insurance Act* currently in force so that they may be determined on an administrative basis given that the *Deposit Insurance Act* has assigned power to the Authority to prescribe forms for the purposes of the Act.ⁱⁱ

Comments must be made no later than **May 9, 2010**. Comments will be made public unless otherwise noted.

The draft Regulation is also available on the website of the *Autorité des marchés financiers* at www.lautorite.qc.ca under "Public Consultations."

Request for comment

Comments regarding the above Regulation may be made in writing to:

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Further information

Further information is available from:

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April 9, 2010

ⁱ S.Q. 2009, c. 58 (Bill 74)
ⁱⁱ R.S.Q., c. A-26, s. 45.1

REGULATION RESPECTING THE APPLICATION OF THE DEPOSIT INSURANCE ACT*

Deposit Insurance Act

(R.S.Q., c. A-26, s. 43, pars. *a, d, e, e.1, f, h.1* to *l, m, m.2* to *r, t* and *u*)

CHAPTER I

SCOPE AND INTERPRETATION

1. The term "deposit of money" means the unpaid balance, including interest thereon, of funds received by an institution or a bank in the normal course of receiving cash deposits from the public for investment purposes, where the obligation of the institution or bank to repay is evidenced by a credit to the depositor's account, by a deposit certificate or by any other document issued by the institution or bank.

A deposit of money does not include

(1) funds repayable upon the expiry of a term exceeding 5 years, unless the institution or bank is required to repay such funds, at any time, on demand by the depositor, after 5 years from the date of the deposit or unless such funds were received before July 1, 1970;

(2) funds used to acquire shares or equity securities issued by a financial services cooperative, an insurer, a trust company or a savings company;

(3) funds repayable, in the case of a winding-up, at a rank subordinate to other ordinary due debts of the institution or bank;

(4) funds used to acquire shares of an investment fund.

A depositor is a person who makes a deposit of money within the meaning of the Deposit Insurance Act (R.S.Q., c. A-26) and this Regulation, or a person to whom an institution or a bank is required to repay such deposit.

2. In addition to the provisions in the first paragraph of section 1, the funds referred to therein constitute a deposit of money within the meaning of the Act and this Regulation where the document evidencing the obligation of the institution or bank to repay or to pay explicitly bears the name of the person entitled, as of the date of issue of the document, to payment or repayment of the funds received.

Where the document is assigned, the name of the assignor, the name of any assignee and the terms of assignment must be noted in the records of the institution or bank.

The first paragraph does not apply where the obligation to repay or to pay is evidenced by a draft, a certified cheque, a traveller's cheque, a letter of credit paid in advance or a money order.

3. The date of deposit is the date on which a sum of money is credited to the depositor, or the date appearing on the instrument issued by the depositary.

A depositary is a registered institution or a bank within the meaning of section 1.2 of the Act where deposits are guaranteed by the Autorité des marchés financiers.

* The Regulation respecting the application of the Deposit Insurance Act, approved by Order-in-Council No. 819-93 dated June 9, 1993 (1993 G.O. 2, 3333), was amended by the regulation approved by Order-in-Council No. 820-2006 dated September 13, 2006 (2006 G.O. 2, 3065) and by Ministerial Order No. 2010-05 dated February 19, 2010 (2010 G.O. 2, 634).

4. A deposit is deemed to be made at the place where the funds are received by the depository, subject to the following provisions:

(1) where the funds are remitted to a branch or agent of the depository, the deposit is deemed to be made at the place where such branch or agent received the funds;

(2) where the depositor requests that the funds be credited to an account maintained at a particular office of the depository, the deposit is deemed to be made at such office;

(3) where the place at which the deposit was made is changed without the consent of the depositor, the deposit is deemed to have been made at the place where the funds were placed by the depositor;

(4) where a depository receives funds giving rise to the issue of a guaranteed investment certificate, a deposit certificate or another document evidencing the deposit, and where it is not possible to establish the place of deposit in accordance with paragraphs 1 to 3 hereof, the deposit is deemed to be made at the office of the depository where the instrument was issued to the depositor or the place from which it was sent to the depositor;

(5) where it is not possible to establish the place of deposit in accordance with paragraphs 1 to 4 hereof, the deposit is deemed to have been made at the depository's head office.

5. An accounting period for premiums is the period from May 1 of every year to April 30 of the next year.

CHAPTER II

PERMIT AND CONDITIONS FOR REGISTRATION

6. A qualified institution applying for registration must complete the form prescribed by the Authority and submit it together with the following documents:

(1) a copy of the institution's constituting act and by-laws, and any amendments thereto;

(2) a certified copy of the institution's audited financial statements for each of the past 3 years, as well as those of its subsidiaries and of the entity that controls it, and a certified copy of the unaudited financial statements for a period ended not more than 90 days prior to the date of its application for a permit where the most recent fiscal year ended more than 120 days but less than 1 year before the date of the application;

(3) a copy of an insurance policy attesting that the institution is insured against fraud, misappropriation and theft;

(4) where applicable, a detailed statement, in the form prescribed by the Authority, of deposits held by the institution outside Québec;

In the case of a newly formed institution, a budgeted statement of assets and liabilities and an operating budget for the fiscal year during which the application for a permit is filed and for the subsequent two years replace the financial statements required under subparagraph 2 of the first paragraph hereof.

7. In addition to the requirements set out in section 6, the Authority issues a permit to any qualified institution that fulfills the following conditions:

(1) it has provided all documents and information required by the Authority;

(2) it intends to solicit and receive deposits of money from the public within the meaning of the Act and this Regulation;

(3) it complies with the provisions of the laws and regulations applicable to it as well as any guidelines, written directions and undertakings made pursuant to such laws;

(4) it is in a position to discharge, when due, any obligation resulting from the receipt of a deposit of money;

(5) it follows sound commercial and financial practices;

(6) it holds an insurance policy covering fraud, misappropriation and theft;

(7) it is not insolvent or about to become so; and

(8) it is in a satisfactory financial position.

Where an institution is not constituted under an Act of Québec, the deposits it holds outside Québec must be insured in accordance with the Canada Deposit Insurance Corporation Act (Revised Statutes of Canada, 1985, chapter C-3) or under a guarantee policy issued by the Authority.

8. A registered institution must, at all times, fulfill the conditions required for the issue of a permit as set out in subparagraphs 3 to 8 of section 7.

CHAPTER III

GUARANTEE AND PREMIUMS PAYABLE

DIVISION I

SEPARATE GUARANTEE

9. A deposit made with the same institution or bank constitutes a deposit separate from any other deposits in the following cases:

(1) the deposit is the aggregate of a person's interests in one or more deposits received by an institution or bank under one or more registered retirement savings plans, registered retirement income funds or tax-free savings accounts in accordance with the Taxation Act (R.S.Q., c. I-3) or the Income Tax Act (Revised Statutes of Canada, 1985, c. 1 (5th Supp.));

(2) the deposit made with an institution or bank by a person acting as a trustee or mandatary with an institution or bank, and the existence of the trust or mandate as well as the name and address of the beneficiary are noted in the records of the institution or bank;

(3) the deposit made with an institution or bank in the interest of persons in respect of which a trustee or mandatary acts as a depositor, and the existence of the trust or mandate, the names and addresses of each beneficiary and the breakdown of the deposit are noted in the records of the institution or bank, except for deposits received under registered retirement savings plans, registered retirement income funds or tax-free savings accounts;

(4) the deposit is the aggregate of the deposits in respect of which a person acts as a co-owner jointly with the same persons, where the existence of each person's interest is noted in the records of the institution or bank;

(5) the deposit is received by an institution or bank and the funds are used to pay the balance owing by a hypothecary debtor with respect to the property taxes on the hypothecated property.

10. An interest acquired by a person in a deposit after the date of the suspension or cancellation of an institution's permit or after the suspension, rescission or expiry of a policy issued by the Authority under section 34 of the Act does not constitute a new deposit for the purposes of the guarantee.

11. Where the Authority's obligation under a guarantee becomes enforceable before the date of expiry of a term deposit, the guarantee period provided for in the second paragraph of section 37 of the Act is extended by no more than two years from the date of expiry of such deposit.

Where the Authority's obligation under a guarantee becomes enforceable after the date of expiry of a term deposit, the guarantee period provided for in the second paragraph of section 37 of the Act is extended by no more than two years from the date on which the Authority's obligation under a guarantee becomes enforceable.

DIVISION II

PREMIUM PAYABLE FOR GUARANTEE PURPOSES UNDER SECTION 33.1 OF THE ACT

§1. — General provisions

12. The amount payable by a registered institution for each accounting period for premiums is equal to the greater of the following amounts:

(1) 1/25 of 1% of an amount equal to the total of the portion of each deposit that is guaranteed by the Authority under section 33.1 of the Act and that is on deposit with the registered institution on April 30 preceding the accounting period for premiums;

(2) \$5,000.

13. The registered institution determines the total deposits of money under the first paragraph of section 12 and informs the Authority of such total within 75 days of the beginning of the accounting period for premiums by completing the form prescribed by the Authority.

14. Notwithstanding section 17, half the premium payable by a registered institution must be paid to the Authority not later than on July 15 of the accounting period for which the premium was established. The balance must be paid not later than on December 15 of the same period.

15. The amount of the premium payable by a registered institution for the accounting period during which it becomes a registered institution is equal to the greater of the following amounts:

(1) a fraction of 1/25 of 1% of an amount equal to the total of the portion of each deposit that is guaranteed by the Authority under section 33.1 of the Act and that is on deposit with the institution on the last day of the month during which it became a registered institution;

(2) a fraction of \$5,000.

The fraction is obtained by dividing by 365 the number of days in the accounting period for premiums during which the guarantee provided for in section 33.1 of the Act is in force.

During an accounting period for premiums, where a registered institution is continued pursuant to the Insurance Companies Act (Statutes of Canada, 1991, chapter 47) or the Trust and Loan Companies Act (Statutes of Canada, 1991, chapter 45), the portion of the unearned premium is reimbursed to the registered institution.

16. A registered institution referred to in section 15 determines the total deposits of money provided for in subparagraph 1 of the first paragraph of section 15 and informs the Authority of such total forthwith by completing the form prescribed by the Authority.

17. Where the premium calculated under section 15 does not exceed half the premium that would have been payable for the full accounting period for premiums, it must be paid to the Authority within 75 days following the end of the month during which the institution becomes a registered institution.

Where the premium calculated under section 15 exceeds half the premium that would have been payable for the full accounting period for premiums, the amount equal to half the premium must be paid to the Authority within 75 days following the end of the month during which the institution becomes a registered institution and the balance not later than on December 15 of the current accounting period.

18. The Authority may charge interest, at the rate determined under section 28 of An Act respecting the Ministère du Revenu (R.S.Q., c. M-31), on any unpaid balance of a premium payable or portion thereof.

19. A security fund established under An Act respecting financial services cooperatives (R.S.Q., c. C-67.3) must send to the Authority, not later than on March 31 preceding the accounting period for premiums, its financial statements and a report of activities covering the period from January 1 to December 31 of the year preceding the accounting period for premiums.

The report must indicate:

(1) the list of financial services cooperatives that are members of such security fund;

(2) the method for calculating every assessment ordered or required by the security fund;

(3) the amount of any assessment established for each member cooperative of the security fund and the conditions for payment of such assessments;

(4) the amounts paid in respect of any assessment by each cooperative and a list of any of the cooperatives that have not paid amounts in respect thereof;

(5) the amounts of loans and grants made to each cooperative and the conditions for repayment of the loans;

(6) guarantees of repayment of an advance or loan made to a cooperative that is a member of the security fund;

(7) agreements made with each such cooperative under which its affairs are managed by the security fund for a fixed period, and the conditions of such agreements;

(8) the acquisition of some or all of the assets of a cooperative that is a member of the security fund and the conditions of such acquisition;

(9) the measures that the security fund determined when making a loan or grant to one or more cooperatives that must be implemented by each such cooperative in order to correct certain of its administrative and financial practices;

(10) the names of cooperatives for which the security fund has acted as liquidator or sequester;

(11) the names of cooperatives for which the security fund has acted as provisional administrator for the purposes of An Act respecting financial services cooperatives;

(12) a list of cooperatives inspected, the number of inspections, the dates of the inspections and a list of cooperatives not inspected;

(13) a detailed list of the security fund's investment portfolio and its investment portfolio management report;

(14) a description of the security fund's activities and a statement of its operations.

20. Where, during an accounting period for premiums, a registered financial services cooperative becomes or ceases to be a member of a security fund whose members benefit from a reduction in premiums, such cooperative benefits or ceases to benefit, as the case may be, from a reduction in premiums for the unexpired part of the accounting period.

§2. Premium payable by a registered extra-provincial institution resulting from an amalgamation

21. The amount of the premium payable by a registered extra-provincial institution resulting from an amalgamation of which any of the amalgamating institutions were already registered for the accounting period for premiums during which the amalgamated institution becomes a registered institution is equal to the amount provided for in the first paragraph of section 15 and calculated in accordance with the second paragraph thereof.

However, the amount of the premium payable by a registered institution or institutions that are part of an amalgamation for the number of days in this accounting period for premiums during which the guarantee prescribed under section 33.1 of the Act is in force must be subtracted from the amount of the premium determined in accordance with the first paragraph hereof.

An extra-provincial institution is an institution incorporated or continued in Canada under a law other than a law of Québec.

DIVISION III

GUARANTEE POLICY AND PREMIUMS

§1. — Guarantee policy

22. A registered institution or a bank seeking to obtain a guarantee policy referred to in section 34 of the Act must file an application by completing the form prescribed by the Authority.

Such guarantee policy must be drafted in the form prescribed by the Authority and must be issued by the Authority. The guarantee policy is for a duration of one year as of the date of issue and is renewed automatically for the same duration until such time as it is suspended, cancelled or rescinded.

23. Subject to the reasons for suspension, cancellation or rescission provided for in the Act and in regulations, a guarantee policy may be terminated where the registered institution or bank involved, together with the Authority, agree to rescind the guarantee after giving the competent authorities of the government of the province in which the deposits were made not less than 90 days' notice of the intention of the registered institution or bank to rescind the guarantee;

And likewise where the Canada Deposit Insurance Corporation, incorporated under the Canada Deposit Insurance Act (Revised Statutes of Canada, 1985, chapter C-3), issues to the registered institution or the bank a guarantee policy that, in the opinion of the

competent authorities of the government of the province in which the deposits were made, provides insurance at least equivalent to the guarantee of the Authority. In such case, the guarantee terminates only once the Authority has been duly informed by the government of the province in which the deposits were made that, in its opinion, the insurance granted to the registered institution or bank by the Canada Deposit Insurance Corporation is at least equivalent to the guarantee of the Authority.

§2. — *Determination of premium*

24. The premium payable by a registered institution or a bank holding a guarantee policy is equal to 1/25 of 1% of the aggregate deposits held on the last day of the preceding accounting period for premiums.

25. The premium payable by a registered institution or a bank for the accounting period for premiums during which its deposits become guaranteed is equal to a fraction of 1/25 of 1% of the aggregate deposits held on the last day of the month during which its deposits became guaranteed, established on the basis of the number of days in such accounting period for premiums during which the guarantee is in force, divided by 365.

26. For premium calculation purposes, each deposit must be included in the aggregate deposits guaranteed by a policy, to a maximum of \$100,000.

27. Half the premium payable by a registered institution or a bank under section 25 hereof must be paid to the Authority not later than on July 15 of the accounting period for which the premium was established. The balance must be paid not later than on December 15 of the same period.

28. The Authority may charge interest, at the rate determined under section 28 of An Act respecting the Ministère du Revenu, on any unpaid balance of a premium payable or portion thereof.

CHAPTER IV **CLAIMS**

29. Any person requiring a payment in execution of the guarantee provided for in the Act must file with the Authority a claim by completing the form prescribed by the Authority, accompanied by instruments and other documents supporting his application. As applicable, the claim must also be accompanied by proof of the existence of a trust or mandate where the payment claimed in execution of the guarantee results from a deposit referred to in the second paragraph of section 9.

30. Where an institution or bank is in either of the situations provided for in subparagraph *e* of the first paragraph of section 34.1 of the Act and where the Authority is required, in execution of its obligation under a guarantee, to make payments to persons who made deposits with such institution or bank, it is not necessary to file the claim provided for under section 29 where the following conditions are fulfilled:

(1) an agreement has been entered into between the Authority and the liquidator of the institution or bank, or between the Authority and the Canada Deposit Insurance Corporation, or between the Authority and another body that administers a similar plan, or another compensation body;

(2) under such agreement, the Authority is provided with documents that enable it to identify the persons entitled to payments in execution of the guarantee of the Authority and to determine any amount to which such persons are entitled under the Act and this Regulation.

31. An application for the payment of any claim based on a negotiable instrument issued by an institution or bank must include, in addition to the detailed statement under section 29, a statement indicating the date on which the claimant acquired such instrument.

32. For the purposes of section 34.4 of the Act, the interest rate calculated on a deposit of money for the period beginning on the winding-up date and ending on the date of full payment of such deposit of money is equal to the rate determined under section 28 of An Act respecting the ministère du Revenu.

CHAPTER V ADVERTISING

33. Every registered institution must display the official logo supplied by the Authority in a conspicuous place at the entrance to and inside any establishment where it carries on its activities.

34. The official logo attesting to registration with the Authority is as follows:



35. A registered institution wishing to inform the public that deposits made with it are guaranteed by the Authority may use only the phrase "Registered under the Deposit Insurance Act with the Autorité des marchés financiers" in its advertising.

36. Every document issued by a registered institution and evidencing the receipt of funds referred to in section 1 hereof must contain the following statement: "This is a deposit within the meaning of the Deposit Insurance Act."

37. The statement "The funds of which receipt is evidenced by this document do not constitute a guaranteed deposit within the meaning of the Deposit Insurance Act." must be included in any document attesting that a registered institution has received funds that do not constitute a deposit for any of the following reasons:

(1) the term of the deposit is longer than 5 years and repayment may not be required on demand after 5 years from the date of deposit;

(2) the document evidencing the institution's obligation to repay does not explicitly bear the name of the person entitled to repayment as of the date of issue of the document;

(3) the deposit is payable in foreign currency.

CHAPTER VI MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

DIVISION I MISCELLANEOUS PROVISIONS

38. Every registered institution must deliver to the Authority a certified copy of the annual report and statement of its operations and financial position. These documents must be accompanied by a report from the institution's auditor.

The delivery to the Authority of the documents referred to in the first paragraph hereof as required under An Act respecting insurance (R.S.Q., c. A-32), An Act respecting trust companies and savings companies (R.S.Q., c. S-29.01) or An Act respecting financial services cooperatives fulfills the requirement set out in the first paragraph hereof.

39. The report on the inspection conducted in respect of a registered institution's affairs under section 42 of the Act must pertain, in particular, to:

(1) the receipt of deposits of money within the meaning of the Act and this Regulation;

(2) the fact that it complies with the Act governing its activities, and with regulations and guidelines;

(3) the holding of an insurance policy covering fraud, misappropriation and theft;

(4) its obligations with respect to the deposits held by the institution;

(5) its administrative, financial and commercial practices;

(6) the security measures related to the funds deposited with the institution.

40. An institution that is continued, converted or amalgamated must apply to the Authority for a review of the permit held by the registered institution.

Such institution must comply with the requirements set out in sections 6 and 7 of this Regulation.

41. Any notice intended for a registered institution or a bank or for any directors or officers of such institution or bank must be delivered by any means attesting to its delivery to the last known address of the head office or principal establishment in Québec of such institution or bank, or to the domicile of the director or officer.

DIVISION II

TRANSITIONAL AND FINAL PROVISIONS

42. This Regulation replaces the Regulation respecting the application of the Deposit Insurance Act approved by Order-in-Council No. 819-93 dated June 9, 1993, except for sections 12 and 50 of the Regulation, which continue to be in force until they are replaced by a regulation approved by the government.

43. This Regulation comes into force on July 15, 2010.