

## **Draft regulations respecting the resolution of a cooperative group**

Deposit Insurance Act, CQLR, chapter A-26<sup>1</sup>, ss. 40.22, 40.50, 40.51 and 43

Act respecting financial services cooperatives, CQLR, chapter C-67.3, s. 601.1

Notice is hereby given by the *Autorité des marchés financiers* (the "Authority") that, in accordance with section 45 of the Deposit Insurance Act ("DIA") and section 601.2 of the Act respecting financial services cooperatives ("FSCA"), the following regulations, the texts of which are published following this notice, may be made by the Authority and subsequently submitted to the Minister of Finance for approval, with or without amendment, after 30 days have elapsed since its publication in the Bulletin of the Authority:

- *Regulation respecting the classes of negotiable and transferable unsecured debts and the issuance of such debts and of shares;*
- *Regulation respecting the indemnification plan applicable pursuant to certain resolution operations;*
- *Regulation respecting the application of sections 40.15 to 40.17 of the Deposit Institutions and Deposit Protection Act to protected financial contracts and their transfer.*

In addition, pursuant to section 565.1 of the FSCA, the Authority is proposing to establish a new guideline, the text of which is published following this notice.

- *Ligne directrice sur la capacité totale d'absorption des pertes.*

These texts are expected to come into force on April 1, 2019.

### **Background**

After the last financial crisis, as in other parts of the world, a major reform of the financial sector carried out in Québec that focused on implementing mechanisms to strengthen the resilience and enable the orderly resolution of systemically important financial institutions ("SIFIs").

By designating the Desjardins Group as a domestic SIFI in June 2013, the Authority increased its oversight and regulatory capital requirements and is now working on implementing a framework for an orderly resolution, the whole in accordance with international standards.

In the past few years, concurrently with the work of the Authority, the Government of Québec carried out an in-depth review of financial sector regulation in Québec. That review led to the passage, on June 13, 2018, of An Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions (S.Q. 2008, chapter 23). This Act amended the DIA in order to give the Authority new resolution powers in respect of cooperative groups, particularly for a bail-in.

The Authority is required to make regulations clarifying, in particular, the application of the powers associated with a bail-in and the indemnification process that would be available to certain eligible creditors and securityholders.

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<sup>1</sup> Note that, as of June 13, 2019, the Deposit Insurance Act will become the Deposit Institutions and Deposit Protection Act.

Subject to the making of those regulations, the Desjardins Group will be governed by a bail-in regime substantially similar to the one applicable to domestic systemically important Canadian banks but adapted to apply to financial services cooperatives and the Québec legislative framework.

Accordingly, the Authority has submitted the following draft regulations:

**Regulation respecting the classes of negotiable and transferable unsecured debts and the issuance of such debts and of shares**

This regulation determines the debts covered under the write-off and conversion powers set out in the second paragraph of section 40.50 of the DIA. It also sets out certain requirements for the issuance of prescribed debts and of shares.

**Regulation respecting the indemnification plan applicable pursuant to certain resolution operations**

This regulation establishes the indemnification process that would be available to certain eligible creditors and securityholders that, as a result of the resolution operations in respect of a deposit institution belonging to a cooperative group, would end up in a less favourable financial position than had the institution been liquidated or wound up in a context other than that of resolution. It also sets out the terms and conditions relating to the computation of the amount of an indemnity and to its payment to eligible persons.

**Regulation respecting the application of sections 40.15 to 40.17 of the Deposit Institutions and Deposit Protection Act to protected financial contracts and their transfer**

This regulation determines the financial contracts referred to in section 40.22 of the DIA and clarifies the application of sections 40.15 to 40.17 of the DIA in order to exclude, subject to certain conditions, such contracts from the application of those legislative provisions, which suspend the rights and remedies of creditors during resolution. The regulation will therefore allow creditors under such contracts to exercise, under certain circumstances, their rights and remedies despite the provisions of sections 40.15 to 40.17 of the DIA.

***Ligne directrice sur la capacité totale d'absorption des pertes (available in French only)***

The purpose of this guideline is to ensure that an SIFI will have sufficient loss absorbing capacity to ensure its recapitalization.

Such total loss absorbing capacity is composed of:

- the regulatory capital required under the *Ligne directrice sur les normes relatives à la suffisance du capital de base*; and
- the prescribed debts under the Regulation respecting the classes of negotiable and transferable unsecured debts and the issuance of such debts and of shares.

Incidentally, the *Ligne directrice sur les normes relatives à la suffisance du capital de base* for financial services cooperatives that are members of a federation will also be amended. We encourage you to read the notice and request for comment for the *Ligne directrice sur les normes relatives à la suffisance du capital de base*, published in this bulletin.

Please note that the *Ligne directrice sur les normes relatives à la suffisance du capital de base* (guideline on capital base adequacy requirements) and the *Ligne directrice sur la capacité totale d'absorption des pertes* (guideline on total loss absorbing capacity) are available in French only.

### **Consultation**

Comments regarding the above may be made in writing, no later than **November 23, 2018**, to the following:

M<sup>e</sup> Anne-Marie Beaudoin  
Corporate Secretary  
Autorité des marchés financiers  
800, square Victoria, 22<sup>e</sup> étage  
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Fax: 514-864-6381  
[consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

Please include a prominent reference to the subject of your comments by inserting a subject line similar to the following:

"RE: Comments relating to the draft regulations and guideline pertaining to the resolution of a cooperative group."

We thank you in advance for any comments.

### **Confidentiality**

We cannot keep submissions confidential. All comments will be posted on the Authority's website at [www.lautorite.qc.ca](http://www.lautorite.qc.ca). Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

### **Additional information**

Additional information is available from the following:

– For the draft regulations:

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– For the *Ligne directrice sur la capacité totale d'absorption des pertes*:

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