

Regulations and other Acts

M.O., 2019-01

Order number A-26-2019-01 of the Minister of Finance, March 7, 2019

Deposit Insurance Act
(chapter A-26)

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

WHEREAS that the first paragraph of section 40.51 of the Deposit Insurance Act (chapter A-26) provide the *Autorité des marchés financiers* must prescribe an indemnification plan by regulation and determine the holders of securities issued by deposit institutions belonging to the cooperative group and the creditors of those institutions that are eligible for the plan;

WHEREAS subparagraph *s.3* of section 43 of such Act provide that the *Autorité des marchés financiers* may make regulations concerning the matters referred to in these subparagraph;

WHEREAS that the first paragraph of section 45 of such Act provide that a regulation made by the *Autorité des marchés financiers* is subject to the approval, with or without amendment, of the Minister of Finance;

WHEREAS that the third paragraph of this section stipulate that a draft regulation may not be submitted for approval or be made before 30 days have elapsed since the publication of the draft in the *Bulletin de l'Autorité des marchés financiers*, that it enters into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified therein and that sections 4, 8, 11 and 17 to 19 of the Regulations Act (chapter R-18.1) do not apply to the regulation;

WHEREAS the draft Regulation respecting the indemnification plan applicable pursuant to certain resolution operations was published in the *Bulletin de l'Autorité des marchés financiers*, volume 15, no. 42 of October 25, 2018;

WHEREAS on February 12, 2019, by the decision no. 2019-PDG-0013, the *Autorité des marchés financiers* made Regulation respecting the indemnification plan applicable pursuant to certain resolution operations;

WHEREAS there is cause to approve this regulation with amendments to correct some errors in writing;

CONSEQUENTLY, the Minister of Finance approves with amendments Regulation respecting the indemnification plan applicable pursuant to certain resolution operations appended hereto.

March 7, 2019

ERIC GIRARD,
Minister of Finance

Regulation respecting the indemnification plan applicable pursuant to certain resolution operations

Deposit Insurance Act
(chapter A-26, ss. 40.51 and 43, par. *s.3*)

CHAPTER I DEFINITIONS

1. In this Regulation:

“intermediary” means any person that, in the ordinary course of its business, holds or owns shares or liabilities on behalf of another person, other than trusts, partnerships and administrators or managers of pension funds, mutual funds, investment funds, development capital investment funds or similar investment entities;

“liability” means a negotiable and transferable unsecured debt, a subordinated debt obligation or a debt of at least \$100 that, immediately before the resolution board orders the implementation of the resolution operations under section 40.12 of the Deposit Institutions and Deposit Protection Act (chapter A-26), is owed by an authorized deposit institution belonging to a cooperative group and excludes any claim against the institution if:

(1) the value of the debt is too uncertain to be provable in a winding-up proceeding; or

(2) the debt is for a monetary loss resulting from the ownership, purchase or sale of contributed capital securities of the institution belonging to a cooperative group or from the annulment of a purchase or sale of contributed capital securities of the institution, or for a contribution or indemnity in respect of the claim;

“share” means any share of the capital stock issued by an authorized deposit institution belonging to a cooperative group;

“subordinated debt” means a debt owed by an authorized deposit institution belonging to a cooperative group that, by the terms of any instrument evidencing the debt, will, in the event of the insolvency or winding-up of the institution, be subordinate in right of payment to all deposit liabilities of the institution and all other liabilities of the institution except those that, by their terms, rank equally with or are subordinate to that debt.

CHAPTER II ELIGIBLE PERSON

2. For the purposes of this Regulation, an eligible person is any person that, immediately before the resolution board orders the implementation of the resolution operations under section 40.12 of the Deposit Institutions and Deposit Protection Act (chapter A-26), holds, directly or through an intermediary, any of the following issued by an authorized deposit institution belonging to a cooperative group:

- (1) shares;
- (2) negotiable and transferable unsecured debts that, after the making of the order of the resolution board, have been converted in whole or in part into contributed capital securities in accordance with the second paragraph of section 40.50 of said Act or in accordance with their contractual terms or have been written off in accordance with said paragraph;
- (3) subordinated debt obligations, if, after the making of the order of the resolution board, the Authority decides to order their transfer in its favour, in favour of the bridge institution or in favour of the asset management company in accordance with the first paragraph of section 40.49 of said Act;
- (4) liabilities, if, after the making of the order of the resolution board, the authorized deposit institution belonging to a cooperative group or the cooperative group is wound up or amalgamated/wound up before the closing of the resolution operations, other than liabilities that are assumed by a bridge institution or transferred to a third party acquirer;
- (5) liabilities that, after the making of the order of the resolution board, are assumed by a bridge institution or transferred to an asset management company that, before the closing of the resolution operations, is wound up, other than liabilities that, after being assumed by the bridge institution or transferred to the asset management company, are transferred to a third party acquirer.

3. An eligible person referred to in section 2 includes the person’s successor in interest but does not include an assignee of rights.

4. An eligible person referred to in section 2 does not include:

- (1) a person that with respect to any liability receives payment in full of the amounts owing in accordance with the liability’s contractual terms; or
- (2) a person that, immediately before the order of the resolution board is made, holds shares or liabilities solely as an intermediary.

5. For the purposes of this Regulation, shares and liabilities of an authorized deposit institution belonging to a cooperative group are of the same class if:

- (1) in the event of a winding-up or an amalgamation/winding-up of the institution, they rank equally in right of payment; and
- (2) following an order of the resolution board, they receive treatment that is substantially equivalent as a result of the order of the resolution board or the implementation of the resolution operations or in accordance with their contractual terms, having regard to the manner in which their resolution value is estimated.

CHAPTER III INDEMNITY

6. The Authority must determine the amount of the indemnity to which an eligible person is entitled and, for such purpose, estimate the liquidation value and resolution value of the eligible person’s shares or liabilities that are referred to in section 2.

7. The liquidation value of a share or liability is the estimated value that the eligible person would have received in respect of the share or liability if, immediately before the order of the resolution board, the authorized deposit institution belonging to a cooperative group or the cooperative group had been wound up in accordance with legislation applicable to the winding-up of insolvent companies or legal persons.

Moreover, the estimate is to be made as if no order of the resolution board has been made in respect of the authorized deposit institution belonging to a cooperative group or the cooperative group and without taking into consideration any assistance, financial or other, that is or may be provided to the institution or the cooperative group, directly or indirectly, by the Authority or by a government in Canada or any of its departments or agencies after the order of the resolution board to wind up the authorized deposit institution belonging to a cooperative group or the cooperative group has been made.

8. The resolution value of a share or liability is the total of the estimated value of the following:

(1) the share or liability, if it is not held by the Authority and it was not converted, after the making of the order of the resolution board, into contributed capital securities in accordance with its contractual terms or after the powers set out in section 40.50 of the Deposit Institutions and Deposit Protection Act (chapter A-26) are exercised;

(2) the contributed capital securities that, after the making of the order of the resolution board, are the result of the conversion of the share or liability carried out in accordance with their contractual terms or obtained after the powers set out in section 40.50 of said Act are exercised;

(3) any dividend or interest payments made with respect to the share, liability or contributed capital securities, after the making of the order of the resolution board, to any person other than the Authority; and

(4) any other cash, securities or other rights that are received or are to be received with respect to the share, the liability or the contributed capital security as a direct or indirect result of the making of the order of the resolution board or the implementation of the resolution operations, including cash, securities or other rights received or to be received from any of the following:

(a) the Authority or the authorized deposit institution belonging to a cooperative group;

(b) the liquidator of the authorized deposit institution belonging to a cooperative group, the liquidator of a cooperative group, an asset management company or a bridge institution, in the event of the winding-up or amalgamation/winding-up of any thereof.

9. The amount of the indemnity to which an eligible person is entitled with respect to each share or liability is determined by the formula:

$$A - B - C$$

where:

A is the estimated liquidation value;

B is the estimated resolution value; and

C is

(1) if the share or liability is converted into contributed capital securities in accordance with its contractual terms, an amount equal to an estimate of losses attributable to that conversion; or

(2) in any other case, zero.

For the purposes of the first paragraph, the Authority must consider the difference between the estimated date on which the liquidation value would be received and the estimated date on which the resolution value is, or would be, received.

An eligible person does not receive any indemnity if the amount of the indemnity determined under this section is zero or a negative value.

10. In determining the amount of the indemnity to which an eligible person is entitled under this chapter, the following must not be considered:

(1) any shares or other rights that a third party receives or retains as a result of an order of the resolution board; and

(2) the contributed capital securities that a third party receives as a result of the conversion of shares or liabilities in accordance with their contractual terms.

11. Every offer of an indemnity in respect of the shares or liabilities of an authorized deposit institution belonging to a cooperative group or the cooperative group that are of the same class must be calculated using the same indemnity amount per series of shares or, in the case of liabilities, per dollar of principal and accrued and unpaid interest, as the case may be.

CHAPTER IV OFFER OF AN INDEMNITY, DECISION AND POWERS OF THE AUTORITÉ DES MARCHÉS FINANCIERS

12. The Authority must give each eligible person a notice stating whether the eligible person is entitled to an indemnity or not and, if so, the amount of the indemnity.

For the purposes of the first paragraph, the notice must be given within a reasonable period of time after one of the following dates, as applicable:

(1) with respect to shares, unsecured debts and subordinated debt obligations referred to in paragraphs 1 to 3 of section 2, the earlier of the date of the closing of the resolution operations set out in section 40.53 of the Deposit Institutions and Deposit Protection Act (chapter A-26) or the date on which the decision is made to wind up or amalgamate/wind up an authorized deposit institution belonging to a cooperative group;

(2) with respect to the liabilities referred to in paragraphs 4 and 5 of section 2, the date on which the decision is made to wind up or amalgamate/wind up the authorized deposit institution belonging to a cooperative group or the cooperative group, or to wind up the bridge institution or the asset management company.

13. The notice referred to in section 12 must:

(1) state that the resolution board has ordered the implementation of the resolution operations in accordance with section 40.12 of the Deposit Institutions and Deposit Protection Act (chapter A-26);

(2) set out a description of the effects of the resolution board's order, including a summary of the effects referred to in sections 40.14 to 40.24 of said Act, as well as the indemnification rule set out in the second paragraph of section 40.51 of said Act;

(3) state that the eligible person has the right to apply for a review of the Authority's decision, in accordance with the first paragraph of section 17, and must exercise that right within 45 days, in accordance with the second paragraph of said section; and

(4) state that, if the eligible person referred to in the notice does not notify the Authority of their acceptance of the offer of an indemnity or if, where the eligible person objects to the offer or is not offered any indemnity, the eligible person does not present their observations within the 45-day period set out in the second paragraph of section 17, the eligible person will receive the indemnity offered or will receive no indemnity, as the case may be, and will not be permitted to apply for a review of the Authority's decision set out in the notice.

14. A summary of the notices given pursuant to section 12 must be published in the Bulletin of the Authority and on the website of an authorized deposit institution belonging to a cooperative group.

15. A person who believes that they are an eligible person but has not received the notice provided for in section 12 may apply to the Authority for a ruling on their eligibility and the amount of the indemnity, if any, to which they would be entitled.

The application must be sent to the Authority within 60 days of the date of publication of the summary referred to in section 14.

16. The Authority must send the applicant its written decision regarding the application sent under section 15.

In addition, if the Authority rules that the applicant is an eligible person, the decision must include the notice referred to in section 12.

17. An eligible person who receives the notice referred to in section 12 or the decision referred to in the first paragraph of section 16 may apply, under section 35.1 of the Act respecting the regulation of the financial sector (chapter E-6.1), for a review of the Authority's decision regarding the entitlement to an indemnity or the amount thereof.

The eligible person must present their observations to the Authority within 45 days of the date of publication of the summary referred to in section 14 or within 45 days of receipt of the documents referred to in section 16, as the case may be.

An eligible person who does not notify the Authority or present their observations within the prescribed period may not apply for a review of the Authority's decision set out in the notice.

CHAPTER V REVIEW AND PAYMENT OF THE INDEMNITY

18. The review of a decision of the Authority in the situations referred to in section 17 must be delegated by the Authority's President and Chief Executive Officer, under section 24 of the Act respecting the regulation of the financial sector (chapter E-6.1), to a person other than a superintendent or a staff member of the Authority.

The person to whom the functions and powers are delegated must be impartial, have knowledge of the applicable legislation and have 10 years' relevant experience in the performance of such functions.

The President and Chief Executive Officer, when designating a person to whom to delegate the functions and powers, must consider the following criteria in determining the person's ability to perform the functions and exercise the powers:

- (1) the person's personal and intellectual qualities;
- (2) the person's experience and the relevance of the experience to the performance or exercise of the designated functions and powers;
- (3) the extent of the person's knowledge and skill;
- (4) the person's judgment, open-mindedness, insight, level-headedness, decision-making abilities and quality of expression; and
- (5) the person's conception of the functions and powers that would be delegated to them.

A person designated in accordance with this section is, for the purposes of this Regulation, called an "assessor".

19. Within 45 days of the designation of an assessor, the Authority must provide a notice of the designation to each eligible person who has applied for a review of a decision of the Authority in the situations referred to in section 17.

20. The review decision must be written in clear and concise terms, set out the reasons for the decision and be notified to the eligible person who applied for the review. It must also:

(1) state the amount that the assessor deems to correspond to the indemnity to which the eligible person is entitled; and

(2) state that the Authority is required to pay the indemnity within 90 days of the date of the review decision, except if the amount of the indemnity continues to be contested.

The assessor must provide the Authority with a copy of any decision sent pursuant to the first paragraph.

21. The Authority must pay to the eligible person the indemnity to which they are entitled within the following period of time:

(1) where the notice set out in section 12 is sent to an eligible person, within 90 days of the date of the notice; and

(2) in all other cases, within 135 days of the date on which the summary referred to in section 14 is published in the Bulletin of the Authority.

However, where a person applies for a review of a decision of the Authority in respect of the amount of the indemnity, the indemnity must not be paid until the amount ceases to be contested.

CHAPTER VI TRANSITIONAL AND FINAL PROVISIONS

22. This Regulation is to be read, between the date it comes into force and 12 June 2019, by replacing:

(1) “Deposit Institutions and Deposit Protection Act” wherever it appears by “Deposit Insurance Act”; and

(2) “authorized deposit institution” and “authorized deposit institutions” wherever they appear by, respectively, “registered institution” and “registered institutions”.

23. This Regulation comes into force on 31 March 2019.

103852

M.O., 2019-02

Order number A-26-2019-02 of the Minister of Finance, March 7, 2019

Deposit Insurance Act
(chapter A-26)

CONCERNING 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

WHEREAS that section 40.22 of the Deposit Insurance Act (chapter A-26) provide that a regulation of the *Autorité des marchés financiers* is to specify how sections 40.15 to 40.18 are to apply to the financial contracts the *Autorité des marchés financiers* determines by regulation;

WHEREAS subparagraphs *s.1* and *u* of section 43 of such Act provide that the *Autorité des marchés financiers* may make regulations concerning the matters referred to in those subparagraphs;

WHEREAS that the first paragraph of section 45 of such Act provide that a regulation made by the *Autorité des marchés financiers* is subject to the approval, with or without amendment, of the Minister of Finance;

WHEREAS that the third paragraph of this section stipulate that a draft regulation may not be submitted for approval or be made before 30 days have elapsed since the publication of the draft in the *Bulletin de l’Autorité des marchés financiers*, that it enters into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified therein and that sections 4, 8, 11 and 17 to 19 of the Regulations Act (chapter R-18.1) do not apply to the regulation;

WHEREAS the draft 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 was published in the *Bulletin de l’Autorité des marchés financiers*, volume 15, no. 42 of October 25, 2018;

WHEREAS on February 12, 2019, by the decision no. 2019-PDG-0014, the *Autorité des marchés financiers* made 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;

WHEREAS there is cause to approve this regulation without amendment;