

FMD DRAFT: NOVEMBER 26, 2017

MEMORANDUM

Date: November <@>, 2017

File/Matter No.: 308656.00001

Client: Canadian Association of Financial Institutions in Insurance (“CAFII”)

Re: Legal Analysis of Bills 141 and 150

We have been asked to review Québec Bills 141 and 150 (the “**Bills**”) in order to identify issues that may affect CAFII’s members in their ability to offer and distribute insurance products without being certified as a firm, particularly creditor and travel insurance. For the purpose of our analysis and as agreed, we have limited our analysis of the Bills to the *Insurers Act, An Act respecting the distribution of financial products and services* (the “**DFPSA**”) and the *Civil Code of Québec* (the “**Civil Code**”).

Please note that our analysis is preliminary and is based on our own interpretation of the Bills, without the benefit of any discussion with the Ministry of Finance and only limited discussion with the Autorité des marchés financiers (the “**AMF**”).

In addition, at this point in time, it is unclear which Bill will be enacted first. Therefore, we identify separately in this memorandum the issues within each Bill which appear to be of significant importance to CAFII members; and then provide implications for CAFII based on the assumption that each Bill will be enacted first and modifications will have to be introduced if the other Bill is enacted thereafter.

It is important to note that our analysis is based on our interpretation of the Bills as they are currently drafted and on the limited information communicated by the Minister of Finance regarding the objectives of certain changes made by the Bills. It is possible that these Bills will subsequently be amended and, if so, a new analysis may be required.

We provide a major issues summary table below on those issues which we recommend should be addressed in a CAFII submission/presentation to the National Assembly (c.c. the AMF), for clarification or modification. In a separate document titled “Analysis of Bill 141 and Bill 150,” we provide a detailed table which identifies all of the issues within the two Bills which we view as pertinent to CAFII members, along with our legal analysis comments.

PROPOSED CHANGE/STATUS ISSUE	IMPLICATIONS FOR CAFII
<p>Sale of insurance online through a distributor (Sections 408 and 431 DFPSA)</p>	<p>Based on our analysis of Bill 141, a distributor can sell insurance online <u>or</u> through a natural person. This interpretation should be confirmed with the National Assembly since the drafting of this Section is ambiguous.</p>
<p>Removal of the distribution guide (removal of Sections 410 to 418, 429, 430, 435, 474, 475 and 476 DFPSA)</p>	<p>It would be helpful to inquire if the distribution guide is to be replaced by another document, such as the document referred to in in new Section 222.3 of the <i>Insurance Act</i> (Québec) introduced in Bill 150 and the new Section 62 of the <i>Insurers Act</i> introduced by Bill 141 (which shall be provided in addition to the insurance certificates referred to in Article 2401 of the <i>Civil Code of Québec</i>). If not, it is important to understand how sales will be governed once the distribution guide is abolished.</p> <p>CAFII's submission to the National Assembly (and subsequently to the AMF when it is drafting Regulations) should inquire as to why the distribution guide is to be abolished and if there is a document which will serve as its replacement.</p>
<p>Removal of the sale of credit insurance through a distributor (removal of Sections 409 and 426 DFPSA)</p>	<p>Bill 150 removes the ability for a distributor to sell credit insurance. We recommend that CAFII confirm with the National Assembly that the intent is <u>not</u> to prohibit CAFII members and other industry players from selling credit insurance, but rather to allow a person to be enrolled in a creditor's group insurance policy without having to involve a certified representative or distributor.</p> <p>In addition, it should also be confirmed that enrolling persons in group insurance through an electronic tool or platform will be permitted.</p>

	<p>It should be pointed out to the National Assembly that if Bill 150 is adopted first, Section 59 of the <i>Insurers Act</i> (as amended by Bill 141) should be reviewed to take into account the fact that CAFII members and other industry players will be allowed to enrol consumers in a creditor’s group insurance policy.</p> <p>Finally, it should be clarified with the National Assembly that Section 85 of the <i>Regulation under the Act respecting insurance</i> will be amended to allow CAFII members and other industry players to receive remuneration for doing so (other than reimbursement of expenses relating to the administration of the contract for group insurance on the life or health of debtors).</p>
<p>Registration as a firm (Section 71 DFPSA)</p>	<p>Since Bill 150 removes the ability for a distributor to sell credit insurance, it is important to clarify with the National Assembly that CAFII members will not have to register as a firm to do so.</p> <p>More particularly, considering the second paragraph of Section 71 of the DFPSA, it is important to confirm that the persons who will enrol consumers in creditor’s group insurance policies and distributors will not have to register as a firm with the AMF, even if they receive commissions based upon the volume of insurance products or financial services sold or offered.</p>