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Bill 61: Restarting Québec's Economy

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Bill 61, *An Act to restart Québec's economy and to mitigate the consequences of the public health emergency declared on 13 March 2020 because of the COVID-19 pandemic* (the Bill) was introduced in the National Assembly on June 3, 2020. Additional measures relating to the protection of commercial tenants were added on June 4, 2020. The government expects that the Bill, which remains subject to changes, will be adopted on June 12, 2020. The object of the Bill is to provide acceleration measures for a period of two years following its assent with respect to projects that are most conducive to restarting Québec's economy, including the construction of seniors' homes, residential and long-term care centres, public transit systems, roads and schools.

We analyze below some of the most salient measures and their expected impact.

1. Suspension of Termination of Commercial Leases for Non-Payment of Rent

The Bill would suspend, during the period beginning on the date on which the Bill is enacted and ending on August 1, 2020 (or any other date specified by the government), the rights of landlords to terminate commercial leases, seize goods contained therein or register prior notices of exercise of hypothecary rights in the event of non-payment of rent due after March 13, 2020. This suspension of landlord rights would apply notwithstanding any provision of the lease between the landlord and tenant. Residential leases are exempt from this measure.

This measure raises a number of questions, particularly given its temporary nature. Until the Bill is passed, landlords would be free to exercise their rights. In addition, the Bill would suspend landlords' rights, not negate them, which would mean that once the suspension ends, commercial landlords could exercise their rights resulting from the non-payment of rent, including for the period that was subject to the suspension.

We note that the government of the province of British Columbia has taken a more targeted approach by preventing, as of May 29, 2020, the eviction of small business tenants whose landlords would be eligible for the Canada Emergency Commercial Rent Assistance (CECRA) program but who have elected not to enter into a rent-reduction agreement with a moratorium on eviction and not to apply for the CECRA program.

2. Streamlined Procedures

a. Expropriation Act

The Bill also introduces streamlined expropriation procedures, paving the way for expeditious authorizations granted to the Minister of Transport to acquire and expropriate property throughout the province, including for ongoing projects such as the Réseau électrique métropolitain (REM) and the extension of the blue and yellow lines of the subway network of the City of Montréal. This may reduce completion delays but will affect the rights of expropriated parties.

For instance, owners of properties located in the vicinity of such projects will not be allowed to contest the right to expropriate. The Bill also sets aside the mechanism to have the provisional indemnity fixed by the Administrative Tribunal of Québec in the case of the expropriation of a business. This indemnity is normally meant to allow the expropriated party to receive financial compensation during the lengthy expropriation procedures. Under the Bill, the provisional indemnity will be fixed at the Minister's discretion, even in the case of ongoing projects such as the blue line of the Montréal subway network.

Under the Bill, ongoing disputes relating to the right to expropriate in respect of the extension of the blue line of the subway network of the City of Montréal may not be continued, and applications to contest will become inadmissible, in both cases as of the date the Bill comes into force. However, in that case, the Bill does provide some relief by allowing expropriated parties to claim the reimbursement of certain expenses, including legal costs.

b. Environment Quality Act

The Bill also introduces measures to streamline processes under the *Environment Quality Act* (EQA) in order to accelerate the implementation of designated projects by authorizing the government, subject to certain conditions, to declare by regulation certain provisions of the EQA inapplicable and to prescribe replacement provisions that apply in such a case.

However, such regulation cannot depart from the provisions set out in the EQA that are applicable to the James Bay and northern Québec region.

In addition, the requirement to obtain ministerial authorization prior to carrying out certain projects or making changes to these projects will remain applicable to the following activities:

- any work, construction or other intervention that may have permanent adverse effects on wetlands and bodies of water;
- any construction on a former residual materials elimination site; and
- subsequent operations stemming from projects subject to the Bill.

Moreover, the Bill sets out specific rules to govern work in some fish habitats that might arise from the designated projects. The Bill also specifically provides for the possibility for the Minister of the Environment and the Fight Against Climate Change, the Minister of Forests, Wildlife and Parks or a regulation, as applicable, to impose monetary compensation when the carrying out of activities in wetlands or bodies of water, in the habitat of a threatened or vulnerable plant species or in a wildlife habitat arising from the designated projects is authorized under the Bill.

We will continue to monitor and update our clients on further developments relating to the Bill and its implications.

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