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The Quebec Government reaffirms its support for venture capital funds

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On March 17, 2016, Finance Minister Carlos Leitão tabled the Quebec Government's 2016-2017 budget in the National Assembly. The budget contains several measures intended to foster job creation and economic growth, with a special emphasis on innovation, environmentally friendly practices, and digital technologies.

The Quebec Government's economic plan includes $65 million in additional funding for three technology seed funds. Factoring in the leveraging effect of matching private investments, $125 million will be available to finance Quebec's innovative technology businesses.

The government's first announcement in this regard is a partnership with the multinational Merck & Co. and the Fonds de solidarité FTQ, which will create the AmorChem II fund. This fund will invest in 15 promising new projects in the life sciences sector originating in Quebec universities and research centres.

The initial closing amount of the fund has been set at $50 million. The Quebec Government will contribute $20 million, and Merck and the Fonds de solidarité FTQ will each invest $15 million. The fund will be open to additional investors in subsequent rounds.

The first fund managed by the AmorChem team was launched in 2011. Its objective is to increase the commercial value of innovative research carried out in Quebec. Its $41 million capitalization is now fully committed to some 20 promising projects.

Another 2016-2017 budget measure will create the **InnovExport** fund, to support innovative Quebec businesses with more than 50 projects focused on export markets. The businesses that will benefit from its support will be at the seed or start-up phase, and will already have the support of an incubator, an accelerator or an equivalent structure.

LAVERY CAPITAL: A LEADER IN MONTREAL IN THE PRIVATE EQUITY, VENTURE CAPITAL AND INVESTMENT MANAGEMENT INDUSTRY

Creating and setting up private equity funds, hedge funds and venture capital funds are complex initiatives requiring specialized legal resources. Lavery Capital has developed enviable expertise in this industry by working closely with promoters to set up such structures in Canada and, in some cases, the United States and Europe, in conjunction with local firms. Through Lavery Capital's strong record of achievements, the firm Lavery sets itself apart in the legal services market by actively supporting promoters, managers, investors, businesses and other partners involved in the various stages of the implementation and deployment of private equity, venture capital and investment management initiatives.

Based in Quebec City, the fund has a capitalization of $30 million. Half of this amount is being funded by the Quebec Government, but the fund can also count on financial support from institutional investors ($12.7 million) and from 15 entrepreneurs ($2.3 million) who will take part in selecting and working with the businesses.

The 2016-2017 budget earmarks $30 million for the creation of a new clean technology seed fund with a target capitalization of $45 million. The details related to the rollout of this initiative will be made public at a later date.

The Quebec Government has also announced a $16 million contribution to the second closing of the **Teralys Capital Innovation Fund.** This amount comes on top of a matching investment by the Federal Government and $64 million in private capital, for a total of $96 million.

This round follows the first closing, which reached $279 million in size. As a result, the fund has reached its target of $375 million, making it the largest fund of funds in Canada.

The mission of the Teralys Capital Innovation Fund is to finance venture capital funds that focus on financing innovative Quebec businesses in the life sciences, green and industrial innovation, and information and communications technologies sectors. To date, it has committed to investing more than $170 million in ten venture capital funds and in five businesses with high growth potential.

Lavery Capital is pleased with these measures which allow the Quebec Government to reaffirm its support for the venture capital industry as a vector of economic development and job creation. The announced measures will help support several innovative businesses at each stage of development and in every sector of the knowledge economy, while fostering the emergence of qualified and internationally competitive venture capital managers in Quebec.

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Proposal towards standardized disclosures of fees and expenses information by private equity funds

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Last January, the Institutional Limited Partners Association (the "ILPA"), a voluntary association promoting the interests of private equity limited partners, issued a "Fee Reporting Template" along with a guide (collectively, the "Template") which forms part of the ILPA's "Fee Transparency Initiative" aimed at standardizing fee reporting and compliance by fund managers throughout the private equity sector.

The Template's two main sections are organized in a way that provides limited partners (the "LPs") with a document setting out "their direct costs of participating in a given private equity fund (a "Fund")" and the general partner's (the "GP") sources of economics regarding the Fund and the investments made by it." [1]

The Template is divided in two levels of disclosure. While the first-tier level ("Level 1") sets out the basic information which the ILPA recommends to disclose to LPs, the second-tier level ("Level 2") of the Template offers more detailed information relating to some Level 1 subtotals. For example, Level 1 discloses the total amount of partnership expenses while Level 2 of the Template shows how such partnership expenses are allocated between bank, legal and audit fees, etc. While the ILPA's goal is to encourage GPs to provide as much Level 2 information as possible, it has divided the Template in two sections to best suit the economics and complexity level of the Funds in an attempt to persuade the highest number of Funds to use it.

The ILPA recommends that the LPs be provided with this fee disclosure document on a quarterly basis and emphasizes that the Template is not intended to be used by GPs to verify their calculation of the fees, expenses and incentive allocations but rather merely as a standardizing tool for disclosures of such fees to the LPs.

[1] *Fee Reporting Template: Suggested Guidance*, Version 1.0, Institutional Limited Partners Association, January 2016, p. 3.

The Template also establishes a "Related Parties" definition which the ILPA urges new Funds to use in order to ensure consistency throughout the private equity Fund's disclosure of any direct and indirect fees which may be ultimately paid by LPs.

This initiative by the ILPA to offer guidance on fee disclosure to actors of the private equity sector follows an increase of actions taken by regulators from the securities field against a number of private equity firms which made misleading disclosures to LPs. These proposed guidelines are also following the general trend in the investment industry, where mutual funds have notably seen their regulatory requirements being enhanced with respect to fee disclosure in the recent years. The adoption of a standardized Template for fee disclosure could reduce regulatory intervention into the private equity funds business. However, the implementation of this Template as a norm by the industry could take some time.

Through this initiative, the ILPA intended to publish a white paper and an appendix to the ILPA's Private Equity Principles addressing compliance issues with Funds' limited partnership agreements. Following the publication of the Template and its guidance document, the ILPA was also to review its best practice documents which relate to a number of key elements of the Template. Those documents were all scheduled to be published on the ILPA's Website in February 2016. However, as of April 7, 2016 none of the white paper, the appendix or the revised best practices has been published.

In the meantime, Fund managers should expect that certain new investors require, in negotiating side letters, that the reporting requirements imposed to managers be further aligned to what is proposed by the ILPA in the Template and should be open to voluntarily include some of these measures in their current fee reporting documents.

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